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Case No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

RICHARD L. DUGGER, Secretary, Florida Department of Corrections,

Petitioner,

v.

WILLIAM D. CHRISTOPHER,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT AND APPENDIX

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QUESTIONS PRESENTED FOR REVIEW

(1) DID THE ELEVENTH CIRCUIT COURT OF APPEALS MISAPPLY MICHIGAN V. MOSLEY, 423 U.S. 96, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975), IN IMPOSING A NEW AND UNJUSTIFIED LIMIT ON POLICE CONDUCT BY REQUIRING THE POLICE TO COMPLY WITH EDWARDS V. ARIZONA, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981), WHERE THERE HAD BEEN NO EDWARDS REQUEST FOR COUNSEL.

(2) AFTER A SUSPECT HAS INVOKED HIS RIGHT TO REMAIN SILENT, DOES THE CONSTITUTION PROHIBIT A NON-INTERROGATORY DISCUSSION ABOUT EXTRADITION AS A ROUTINE INCIDENT OF THE CUSTODIAL RELATIONSHIP.

(3) WHETHER THE LOWER COURT ERRED IN FAILING TO APPLY THE PRESUMPTION OF CORRECTNESS REQUIRED BY 28 U.S.C. §2254(d) TO THE STATE COURT'S FACTUAL FINDING THAT THE DEFENDANT DID NOT EXERCISE HIS RIGHT TO REMAIN SILENT.

(4) WHETHER A FEDERAL DISTRICT COURT'S FINDING OF FACT, WHILE PRESIDING IN HABEAS CORPUS REVIEW, IS SUBJECT TO THE CLEARLY ERRONEOUS STANDARD OF RULE 52(a) OF THE FEDERAL RULES OF CIVIL PROCEDURE.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

OTHER AUTHORITIES:

OPINIONS BELOW

The opinion of the court of appeals, Eleventh Circuit, is reported at F.2d ___ (11th Cir. 1987) and appears in the appendix as A 1-47. The opinion of the Florida Supreme Court on direct appeal is reported as Christopher v. State, 407 So.2d 198 (Fla. 1981), cert. denied, 456 U.S. 910, 72 L.Ed.2d 169 (1982). The opinion of the district court is reported in Christopher v. State, 582 F.Supp. 633 (S.D. Fla. 1984).

JURISDICTIONAL STATEMENT

The judgment of the Eleventh Circuit Court of Appeals was entered on July 23, 1987. A petition for rehearing was timely filed and denied on September 3, 1987. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime; unless on a presentment or indictment of the grand jury, accepting cases arising in the land or naval forces, or in the malicia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life, or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Fourteenth Amendment to the United States Constitution provides, inter alia:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law;

nor deny to any person within its jurisdiction the equal protection of the laws.

Title 28 U.S.C. §2254(d) provides that:

> (d) In any proceeding instituted in a Federal court by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination after a hearing on the merits of a factual issue, made by a State court of competent jurisdiction in a proceeding to which the applicant for the writ and the State or an officer or agent thereof were parties, evidenced by a written finding, written opinion, or other reliable and adequate written indicia, shall be presumed to be correct, unless the applicant shall establish or it shall otherwise appear, or the respondent shall admit--
>
> > (1) that the merits of the factual dispute were not resolved in the State court hearing;
> >
> > (2) that the factfinding procedure employed by the State court was not adequate to afford a full and fair hearing;
> >
> > (3) that the material facts were not adequately deve-

loped at the State court hearing;

(4) that the State court lacked jurisdiction of the subject matter or over the person of the applicant in the State court proceeding;

(5) that the applicant was an indigent and the State court, in deprivation of his constitutional right, failed to appoint counsel to represent him in the State court proceeding;

(6) that the applicant did not receive a full, fair, and adequate hearing in the State court proceeding; or

(7) that the applicant was otherwise denied due process of law in the State court proceeding;

(8) or unless that part of the record of the State court proceeding in which the determination of such factual issue was made, pertinent to a determination of the sufficiency of the evidence to support such factual determination, is produced as provided for hereinafter, and the Federal court on a consideration of such part of the record as a whole concludes that such factual determination is not fairly supported by the record:

And in an evidentiary hearing in the proceeding in the Federal court, when due proof of such factual determination has been made, unless the existence of one or more of the circumstances respectively set forth in paragraphs numbered (1) to (7), inclusive, is shown by the applicant, otherwise appears, or is admitted by the respondent, or unless the court concludes pursuant to the provisions of paragraph numbered (8) that the record in the State court proceeding, considered as a whole, does not fairly support such factual determination, the burden shall rest upon the applicant to establish by convincing evidence that the factual determination by the State court was erroneous.

STATEMENT OF THE CASE

Ten years ago, in the summer of 1977, Respondent, William Christopher, came to Naples, Florida to visit his fourteen-year old illegitimate daughter, Norma. Norma lived with her adoptive mother, Bertha Skillen and Mrs. Skillen's boyfriend, George Ahern. Soon after his arrival in Naples, Christopher and his fourteen-year old daughter became lovers and they secretly planned to leave Naples together and return to Christopher's home in Memphis, Tennessee. On August 30, 1977, Norma and Christopher packed their suitcases, hid them under Norma's bed and planned on leaving for Memphis the following day. On August 31st, while Norma was at school, Mrs. Skillen apparently discovered Christopher's plan and Christopher

shot and killed Mrs. Skillen and hid her body in the bathroom. Christopher then waited for Mr. Ahern to return home so that he could borrow $300 to finance his trip back to Memphis. Christopher accompanied Ahern to the bank in order to obtain the money; and, when they returned to the apartment, Christopher shot Mr. Ahern twice, killing him. Christopher fled the State of Florida, taking with him his fourteen-year old daughter.

Christopher was arrested at 11:30 p.m. on September 21, 1977 in Memphis, Tennessee, pursuant to the Florida warrant for murder. The Florida authorities were notified of the arrest and on September 22, 1977, Lt. Mills and Officer Young, the Florida officers in charge of the murder investigation, went to Memphis

where they interviewed fourteen-year old Norma during the afternoon and then proceeded to interrogate Christopher at approximately 7:30 p.m. that evening. Christopher was brought to the police captain's office for the interview. Present in the office were the two Florida officers and three members of the Memphis Police Department. The officers introduced themselves to Christopher, explained their presence and purpose, and advised Christopher of his Miranda rights. Christopher agreed to tape record the interview and so, approximately five minutes after the initial introductions, the tape recorder was activated, the officers again advised Christopher of his Miranda rights and Christopher proceeded to recount a "murder-suicide" story, i.e. that Ahern

murdered Mrs. Skillen and then killed himself. The tape recorded interview lasted approximately one hour. During the last few minutes of this taped interview, Christopher made three separate statements indicating that he had nothing else to say if he was being charged with both murders. 824 F.2d at 840; A-11; A-152-153; A-158-160. Because the dialogue continued, the following excerpt from the conclusion of the first taped statement is crucial to a resolution of the issues presented in this petition:

CHRISTOPHER:
Well, look, I'm just constantly telling lies, look, I ain't got nothing to say at all, pete, why I have, you know, and that's it. I ain't saying nothing else.

MILLS: Okay.

CHRISTOPHER:
That I'm charged with two murders, -- is all I can say.

MILLS: Okay, this brings us up to another point, which has nothing to do with what we're talking about. Ah, we're here from Florida and these warrants, these warrants are from Florida. Which you know you have to be extradited down there. That can come abut several different ways, you can sign on whether you want -------- ----- here. Ah, would you sign a waiver and go back?

CHRISTOPHER:
When are you all taking me back if I sign a waiver?

MILLS: When?

CHRISTOPHER:
Yeah.

MILLS: Ah -- possibly this weekend. These things take time, you know, even signing a waiver, I think there's a little legal mumble jumble here ---

CHRISTOPHER:
Right. If I don't sign, how long do I got before you all take me back?

MILLS: Well, we'll go ahead and initiate the ah, the proceedings, and ah, everhow they progress well, as soon as the proceedings are over, then, we're going back down.

YOUNG: I can't say how long it will

be, it might take a week, I don't know.

BOSWELL:
It's usually 30 to 60 days.

MILLS: Is that right?

CHRISTOPHER:
Can I ask one question?

MILLS: Sure.

CHRISTOPHER:
I mean, off with this thing too?

MILLS: Sure.

YOUNG: You want it turned off?

CHRISTOPHER:
Huh-uh. I don't care. I just, I just like to know -- (tape ends)

(A-158-160)

At that point the tape recorder was turned off at Christopher's request. During the off-tape discussion, Christopher inquired about possible charges against his family members, he repeated his murder-suicide story and, when he was confronted with the fact that his version of the events did not match the known facts

and there must be a logical explanation for the murders, Christopher began a lengthy narrative -- beginning with his daughter's birth and ending with his confession to murdering both victims.

Christopher was asked to write out a statement, but he declined to do so, agreeing instead to tape record a second statement. And so, at approximately 10:30 p.m., the tape recorder was turned on, the officers again advised Christopher of his Miranda rights and Christopher again confessed to murdering both victims. And so, there were three sets of statements Christopher made to the police, the first tape-recorded statement following two separate readings of Miranda in which Christopher recited a murder-suicide story; the second, when Christopher asked to go off the tape, questioned the officers and subsequently narrated the event beginning with his daughter's birth

and culminating with his confession; and the third, a 19-minute taped summary of his confession which preceded by another set of Miranda warnings.

On May 10, 1978, Christopher filed a Motion to Suppress his confessions (A-179-181). A suppression hearing was held in the trial court on May 19, 1978, in which the testimony was presented from the two Florida officers and the Memphis police captain present during the Tennessee interview. At the conclusion of the suppression hearing, the trial court announced that he had listened to the actual tape recordings of the Tennessee interview, found that Miranda had been complied with and concluded that the confessions were freely and voluntarily made. (A-94-96)

All of Christopher's statements to law enforcement were introduced at his 1978 trial. He was found guilty of two

counts of first degree murder and, on November 13, 1978, the trial court sentenced Christopher to death after concluding that, under Florida law, two aggravating factors were present: (1) Christopher was previously convicted of violent felonies, i.e. in 1972, Christopher pled guilty to assault to commit murder and attempted rape and (2) that the murders were heinous, atrocious, or cruel. The trial court found no mitigating factors and balancing the aggravating the mitigating factors, as required by Florida law, the trial court found the aggravating circumstances predominated and sentenced him to death.

The Florida Supreme Court affirmed Christopher's convictions and sentences on December 10, 1981, and rejected Christopher's claim that the police failed to honor his request to cut off questioning, specifically finding "no

evidence that the appellant exercised his right to halt the interrogation. The appellant continued his conversation with the interrogating deputies of his own free will." Christopher v. State, 407 So.2d 198 (Fla. 1981).

On March 29, 1982, this Court denied Christopher's petition for certiorari in which he raised the following issue:

> WHETHER DURING POLICE CUSTODIAL INTERROGATION, A DEFENDANT HAS INDICATED "IN ANY MANNER" HIS DESIRE TO REMAIN SILENT (THUS INVOKING HIS FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION) WHEN HE SAID: (1) "THEN I'VE GOT NOTHING ELSE TO SAY. IF YOU'RE ACCUSING ME OF MURDER, THEN TAKE ME DOWN THERE;" (2) "I GOT NOTHING ELSE TO SAY;" (3) "WHAT'S THE NEED OF ME SAYING ANYTHING THEN."

Christopher v. Florida, 456 U.S. 910, 72 L.Ed.2d 169, 102 S.Ct. 1761 (1982), U.S. S.Ct. Case No. 81-6172.

Pursuant to Fla. R. Crim. P. 3.850, petitioner then moved the Florida trial court for post-conviction relief. Following the summary denial of his

motion, Christopher appealed to the Florida Supreme Court. The Court affirmed the denial of Christopher's post-conviction motion in Christopher v. State, 416 So.2d 450 (Fla. 1982).

On June 22, 1982, having exhausted his state remedies, Christopher filed for habeas corpus relief with the United States District Court for the Southern District of Florida. The District Court denied relief on March 13, 1984, in a lengthy opinion published at Christopher v. Florida, 582 F.Supp. 633 (S.D. Fla. 1984).

Christopher appealed the denial of habeas corpus relief to the Eleventh Circuit, and on July 23, 1987, rehearing denied September 3, 1987, the Eleventh Circuit reversed and remanded the case with directions to the district court to grant the writ of habeas corpus with respect to both murder convictions,

conditioned upon the State's affording Christopher a new trial. Christopher v. State, 824 F.2d 836 (1987). The Eleventh Circuit held that the admission of Christopher's confessions violated Michigan v. Mosley, 423 U.S. 96, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975) and concluded that Christopher's confessions were improperly obtained after Christopher invoked his right to remain silent. In so doing, the Eleventh Circuit failed to presume correct the state court's findings, refused to give due deference to their own district court's findings of fact on this issue, restricted police officers "non-interrogatory conversation" to such banal matters as whether the suspect wishes a glass of water and imposed the requirements of Edwards v. Arizona in a case where there had been no Edwards request for counsel. Thus, by prohibiting a non-interrogatory discussion

about extradition as a routine incident of the custodial relationship and by imposing the Edwards requirements to a case where there had been no request for counsel, the Eleventh Circuit has effectively overturned Michigan v. Mosley by applying a principle of law to a situation not contemplated or required by the previously announced decisions of this Court.

REASONS FOR GRANTING THE WRIT

The Eleventh Circuit Court of Appeals has misapplied this court's decision in Michigan v. Mosley, 423 U.S. 96, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975), to (1) require that once a suspect has invoked his Fifth Amendment right to remain silent, the interrogating officers must restrict their "non-interrogatory conversation" to such banal matters as whether the suspect wishes a glass of water and (2) by imposing the strict requirements of Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981), and Oregon v. Bradshaw, 462 U.S. 1039, 103 S.Ct. 2830, 77 L.Ed.2d 405 (1983), both right-to-counsel cases, where the suspect never made any request for counsel.

Mosley recognizes that not all statements or answers made by a suspect after exercising the right to cut off question-

ing are subject to suppression; the relevant inquiry is whether under the circumstances the resumption of questioning was consistent with the officer's scrupulous observance of the defendant's right to cut off questioning. Both Edwards v. Arizona and Oregon v. Bradshaw apply to cases in which a suspect has invoked his Fifth Amendment right to counsel. In this case, respondent, William Christopher, never invoked his right to counsel.

Notwithstanding the acknowledgment that the right to counsel and right to silence cases are distinguishable because the right to silence is not protected by a per se rule, compare Mosley, 423 U.S. at 101-04 and n.10, with Edwards, 451 U.S. 484-85, the Eleventh Circuit nevertheless now applies the strict Edwards/Bradshaw test to hold that when a suspect invokes his Fifth Amendment right to remain silent, the suspect's post-request

responses are admissible only if the suspect both initiated the dialogue and waived his previously asserted right. 824 F.2d 844. The Eleventh Circuit now directs that the police must comply with the Edwards standards even where there had been no Edwards request for counsel. Thus, by imposing the Edwards requirements to a case where there had been no request for counsel, the Eleventh Circuit has effectively overturned Mosley by applying a principle of law to a situation not contemplated or required by the previously announced decisions of this Court.

Initially, we are faced with the query: Can a police officer continue to converse, permissibly, with a suspect who, during an interrogation, invokes his right to remain silent? The answer is: of course; they can engage in non-interrogatory conversation relating to routine incidents of the custodial relationship

without violating the dictates of Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

The Eleventh Circuit Court of Appeals, itself, in its opinion sub judice, acknowledges:

> ". . . the police may terminate an interrogation without falling into total silence . . ."
>
> 824 F.2d at 845.

But, then, what are the parameters of such a conversation, i.e. what are permissible and impermissible subject matters?

In its opinion, the Eleventh Circuit recognizes:

> [T]he term 'interrogation' under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. (emphasis added)

824 F.2d 842, fn. 16, citing Rhode Island v. Innis, 446 U.S. 291, 301, 100 S.Ct. 1682, 1689-90, 64 L.Ed.2d 297 (1980) (footnotes omitted).

While recognizing that subject matters routinely attendant to arrest and custody do not constitute interrogation, the Eleventh Circuit Court of Appeals continues:

> Although the police may terminate an interrogation without falling into total silence, any discussion with the suspect other than that 'relating to routine incidents of the custodial relationship' must be considered a continuation of the interrogation. (emphasis added)

824 F.2d at 845, citing Bradshaw, 462 U.S. at 1045, 103 S.Ct. at 2835.

What does the Eleventh Circuit Court of Appeals mean by the phrase 'relating to routine incidents of the custodial relationship'? According to the Eleventh Circuit, the officers may permissibly inquire about a suspect's thirst but the officers may not discuss extradition procedures with the suspect.

> Specifically, the police may make routine inquiries of a suspect after he requests that they terminate questioning, such as whether he would like a drink of water. (emphasis added)

824 F.2d at 845, citing Bradshaw, 462 U.S. at 1045, 103 S.Ct. at 2835.

The Eleventh Circuit's collateral determination is far too restrictive and impractical and contrary to this court's precedent; it encourages judicial inspection of every routine, ministerial question, and impedes the operation of necessary police administrative procedures while not significantly increasing the level of protection against improper interrogation. United States v. Taylor, 799 F.2d 126 (4th Cir. 1986), cert. denied, 107 S.Ct. 1308, 94 L.Ed.2d 162 (1987).

The central issue in this case resolves itself into setting reasonable parameters of the permissible scope of conversation with a suspect after he has terminated the interrogation. Here, the extradition discussion was not subject to serious debate by any of the prior reviewing courts until the Eleventh Circuit

determined that the officer's conduct was unscrupulous.

The defendant William D. Christopher shot to death Bertha Skillen and George Ahern in their Florida home. And, on September 21, 1977, he was arrested in Memphis, Tennessee, on a Florida warrant, and interrogated by two Florida police officers, Lieutenant Mills and Officer Young, in the presence of three Memphis police officers who did not actively take part in the interview.

During that interrogation, the Eleventh Circuit concluded, the defendant invoked his right to remain silent and the interrogating police officers failed to "scrupulously honor" the defendant's right to cut off questioning.

In so concluding, the Eleventh Circuit overruled the United States District Court which had previously affirmed the Florida Supreme Court which

had, in turn, affirmed the trial court. The trial court alone heard the testimony at the motion to suppress hearing and listened to the actual tape-recorded conversations between the defendant and the police officers before concluding that the defendant, in fact, had not invoked his right to remain silent.

How can the trial court, after hearing the witnesses and the tape-recorded conversations, conclude that the suspect had not invoked his right to remain silent when the Eleventh Circuit, reading the transcripts, alone, found to the contrary? The answer to this question may be found in the transcript included in the record before the Eleventh Circuit of the suppression hearing testimony of Officer Mills who, on cross examination by defense counsel, explained:

> [Defense Counsel]: Q. Okay, I noticed that at one point in the statement towards the end there, I think it's about, oh, three

pages from the end, that the defendant makes -- says that he doesn't want to say anything else. But you went on and questioned him after that, did you not?

A. I would have to see that to know what portion you're talking about.

Q. Bottom of page 16 there.

A. Yes, sir, I recall those. If you listen to the tape on this, you can tell that when he said this, he just kept on talking.

Q. Okay.

A. There was no break in his conversation or anything, he -- he -- just made one statement right after this. He said that I have nothing else to say, and he just kept right on talking.

Q. He went right on talking after Young asked him another question?

A. It doesn't show on the transcript, but if you listen to the tape, there was actually some comments by him between the time -- while Young was making that statement. They were actually talking over each other; he kept right on talking.

(R. 1272; A-88-89)

It is always a difficult matter for a court reporter, who was not present, to

transcribe accurately from a recording of a conversation with overlapping speakers. In dealing with this legitimate concern, one particularly described by Officer Mills, the trial court actually listened to the recording of the taped interviews prior to ruling on the Motion to Suppress. (R. 1297; A-94)

If, then, as Officer Mills testified, the sequence of statements contained in the transcript is an artificial sequence created by the court reporter wrestling with overlapping voices on the tape-recording, such a finding would completely undermine the Eleventh Circuit's rationale in this case. At the very least, given the apparent ambiguity, on a matter of such importance, the Eleventh Circuit should have presumed the correctness of the trial court's finding, since the trial court alone heard the actual tape-recording. See, e.g., Robinson v. Pearcy,

738 F.2d 214, 219 (7th Cir. 1984) [Where the record was ambiguous on whether the questions asked by the police detective during processing constituted interrogation, the Court of Appeals concluded that it must uphold the trial court's factual findings absent clear error.]

Even assuming, arguendo, the correctness of the transcript sequence and, further, assuming, arguendo, that the defendant invoked his right to remain silent during the interrogation, and assuming that the police failed to "scrupulously honor" all but his last request to end the questioning; what then? May not the police comply with the dictates of Mosley by legitimately apprising the suspect of routine extradition procedures following the suspect's invocation of his right to remain silent and, when the suspect himself reinitiates the dialogue, cannot the officers respond to the

suspect's reinitiation and continue the dialogue?

The defendant's final request to end the questioning at the end of the first taped interview, and the officers' response, is set forth by the Eleventh Circuit in their opinion as follows:

> CHRISTOPHER: Well, look, I'm just constantly telling lies, look I ain't got nothing to say at all, Pete, why I have, you know, and that's it. I ain't saying nothing else.
>
> MILLS: Okay.
>
> CHRISTOPHER: That I'm charged with two murders, ---, is all I can say.
>
> MILLS: Okay. This brings us up to another point, which has nothing to do with what we're talking about. [emphasis added] Ah, we're here from Florida and these warrants, these warrants are from Florida. Which you know you have to be extradited down there. That can come about several different ways, you can sign on whether you want --- here. Ah, would you sign a waiver and go back?
>
> CHRISTOPHER: When are you taking me back if I sign a waiver? . . . [short exchange on when taking

him back if he signs].

CHRISTOPHER: Right. If I don't sign, how long have I got before you all take me back?

MILLS: Well, we'll go ahead and initiate the ah, the proceedings, and ah, everhow they progress, well, as soon as the proceedings are over, then, we're going back down.

YOUNG: I can't say how long it will be, it might take a week, I don't know.

BOSWELL: It's usually 30 to 60 days.

MILLS: Is that right?

CHRISTOPHER: Can I ask one question?

MILLS: Sure . . .

(emphasis added) [824 L.Ed.2d at 843, fn. 20 (A-158-160).

Where is there any "interrogation" about the crime by the police in the foregoing exchange? There is none. Where are the questions, words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response from the suspect

under Rhode Island v. Innis, 446 U.S. 291, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980). There are none. On the contrary, there is no "interrogation" at all but, rather, an imparting of information by the police to the accused: ministerial matters and information which are normally attendant to arrest and custody -- ministerial matters and information relating to routine incidents of the custodial relationship.

Nevertheless, the Eleventh Circuit concluded that the foregoing exchange constituted a custodial interrogation after the suspect invoked his right to terminate questioning. And, armed with that conclusion, the Eleventh Circuit went on to reason that the confessions following that "interrogation" were tainted and mandated the granting of habeas relief ten years after the murders and confessions. The Eleventh Circuit's opinion is a classic

syllogism built on a faulty premise.

The Eleventh Circuit's decision is premised solely on its characterization of the extradition discussion as an "interrogation", to wit:

> Accordingly, we conclude that, because the initial police-initiated interrogation was still in progress when Christopher asked the question at issue this question was not an 'initiation'; rather, it was merely a question posed during the course of an ongoing police-initiated interrogation. Therefore, given that an unlawfully continued police-intitiated interrogation is not rendered lawful simply because a suspect asked a question, we reject the State's argument and hold the confession inadmissible.
>
> 824 L.Ed.2d at 846.

If the topic of extradition is not an "interrogation", as the Eleventh Circuit characterizes it, -- if it is, instead, permissible "non-interrogatory conversation", not in violation of Miranda and its progeny, then, the Eleventh Circuit's premise fails and so, too, must its conclusion fail. The officers' actions in

advising Christopher of the routine procedures associated with extradition were entirely consistent with the "scrupulous observance" of Christopher's right to cut off questioning.

Why should the Eleventh Circuit's grant of habeas relief be summarily reversed if the extradition discussion is not an "interrogation"? Because, at the end of that exchange, the defendant Christopher reinitiates the dialogue when he says:

> CHRISTOPHER: Can I ask one question?
>
> MILLS: Sure . . .
> (824 F.2d at 844, fn. 20; A-160)

And, it was after the defendant Christopher so reinitiated the dialogue, and continued asking not one but several questions that he confessed to the murders -- confessed, not once, but twice. And, prior to his second confession, he was re-Mirandized. His second confession, after

receiving and waiving renewed Miranda warnings, was tape-recorded. Thus, assuming the officers should be held to the higher standards heretofore previously applicable only in right-to-counsel cases, not only did the continued interview with Christopher satisfy the "initiation" prong of the Edwards/Bradshaw test but Christopher's explicit tape-recorded waiver at the commencement of the second taped statement, which leaves nothing to inference, satifies the "waiver" prong of this test. Here, as in Wyrick v. Fields, 459 U.S. 42, 74 L.Ed.2d 214, 103 S.Ct. 394 (1982), the Court of Appeals has imposed a new and unjustified restriction on police questioning of a suspect who initiates further dialogue and waives his previously asserted Fifth Amendment rights.

In the case of Oregon v. Bradshaw, 462 U.S. 1039, 77 L.Ed.2d 405, 203 S.Ct. 2830 (1983), this Court held that the

defendant there reinitiated the questioning when he asked: "Well, what is going to happen to me now?" And so, the Eleventh Circuit does not dispute that the particular question asked by Christopher, i.e. "Can I ask one question?", was sufficient to reinitiate the questioning which led to the confession. Instead, the Eleventh Circuit applied the hybrid Edwards/Bradshaw Rule formulated from right-to-counsel cases to this right-to-silence case in holding that the defendant Christopher could not have "reinitiated" the questioning because the police persisted in interrogating him after he sought to cut off questioning at an earlier point in time. By virtue of its opinion, the Eleventh Circuit is now announcing that police officers must comply with Edwards despite the fact that there had been no Edwards request for counsel. Contrary to Solem v. Stumes, 465

U.S. 638, 104 S.Ct. 1338, 79 L.Ed.2d 579 (1984) the Eleventh Circuit is directing, on collateral review, that Christopher's 1978 trial must be relitigated based on a stricter standard announced three years after Christopher's trial and previously found applicable only in right-to-counsel cases even where Christopher did not request counsel.

In granting habeas relief, the Eleventh Circuit devoted a significant portion of its opinion to whether Christopher sufficiently invoked his right to remain silent prior to the quoted exchange involving extradition. Prior courts, in this cause, had held that the defendant had not exercised his right to halt the interrogation, but the Eleventh Circuit disagreed. Such a conclusion, even if it were accurate, would not further the inquiry here because nothing said by the defendant Christopher prior to

the discussion about extradition was incriminating; and so, it does not matter, for our purposes here, if the defendant sufficiently invoked his right to silence prior to the exchange concerning extradition.[1]

The characterization of the conversation concerning extradition is all important in the resolution of the case sub judice because if it is a "non-interrogatory conversation," then, the defendant Christopher's confessions, one or both of them, are admissible because Christopher reinitiated the dialogue, he confessed following his own narrative of the events beginning with his daughter's birth and, in addition, received Miranda

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1/ Even if the post-request statements under Smith v. Illinois 469 U.S. 91, 83 L.Ed.2d 488, 105 S.Ct. 490 (1984) may not be used to cast retrospective doubt on the clarity of a request [for counsel], the suspect's subsequent statements are relevant on the question of waiver. 83 L.Ed.2d at 496.

warnings anew prior to the second taped statement and second confession.

The Eleventh Circuit's narrow interpretation of the permissible scope of a "non-interrogoatory conversation" following a suspect's invocation of his right to remain silent is impractical and contrary to Miranda and its progeny.

While the Eleventh Circuit grants that "routine inquiries" may be made by police after they terminate questioning, their direct routine inquiries must be limited to such banalities as ". . . whether he would like a drink of water." 824 F.2d at 845, citing Bradshaw, 462 U.S. at 1045, 103 S.Ct. at 2835.

In using the analogy concerning the "drink of water" the Eleventh Circuit misconstrued Bradshaw, supra, where the phrase was used as an example of the kind of phrase which would not be interpreted as a suspect or police reinitiating ques-

tioning. It had nothing whatsoever to do with the scope of the non-interrogatory conversation by a police officer. Specifically, Bradshaw says:

> Such inquiries or statements, by either an accused or a police officer, relating to routine incidents of the custodial relationship, will not generally 'initiate' a conversation in the sense in which that word was used in Edwards.

Bradshaw, 462 U.S. at 1045, 77 L.Ed.2d at 412.

Surely the police must be able to discuss matters which are routine incidents of the custodial relationship other than the suspect's thirst. The police must be able to discuss ministerial matters which are normally attendant to arrest and custody, such as extradition procedures and time frames involved in those procedures. The discussion regarding extradition is inherently ministerial and does not violate Miranda.

In short, then, when the defendant

Christopher reinitiated the questioning (and he did so if the extradition exchange was a "non-interrogatory conversation"), then, habeas relief should have been denied on this ground if either of the defendant's subsequent confessions were voluntary; and, since the Eleventh Circuit did not even reach the issue of voluntariness, summary reversal is mandated.

Absent from the Eleventh Circuit's resolution of this issue is whether the presumption of correctness mandated by 28 U.S.C. §2254(d) applies to the state court's finding that Christopher did not exercise his right to halt the interrogation and continued his conversation with the deputies of his own free will. The Eleventh Circuit merely announced that the Florida Supreme Court incorrectly treated the right to cut off questioning claim as if it were a voluntariness claim; and, in support of their conclusion, the Eleventh

Circuit relied solely on the fact that the Florida Supreme Court did not cite to Miranda v. Arizona in their opinion, 824 F.2d at 839, fn.9. The Eleventh Circuit's criticism of the Florida Supreme Court's treatment of this issue cannot stand in light of the Florida Supreme Court's explicit reference to Christopher's claim, i.e. "Did the trial court err in admitting appellant's confession because (a) he did not freely and voluntarily confess, and (b) the police failed to honor his request to cut-off questioning, in violation of the Fifth and Fourteenth Amendments to the United States Constitution, and article I, section 9, of the Florida Constitution?; 407 So.2d at 200; and the Florida Supreme Court's finding: "[T]urning to the second issue, the admissibility of the confession, we find no evidence that the appellant exercised his right to halt the interrogation. The appellant continued

his conversation with the interrogating deputies of his own free will." (407 So.2d at 200, A-58).

Section 2254(d)'s presumption of correctness applies to subsidiary findings underlying a state court's resolution of the question of voluntariness. Miller v. Fenton, 474 U.S. 104, 106 S.Ct. 445, 88 L.Ed.2d 405 (1985). In the confession context, subsidiary questions such as whether the police engaged in intimidation tactics as alleged by the defendant, LaVallee v. DelleRose, 410 U.S. 690, 35 L.Ed.2d 637, 93 S.Ct. 1203 (1973) and whether the police "deliberately elicited" incriminating statements as in Kuhlman v. Wilson, 91 L.Ed.2d 364, 477 U.S. ___, 106 S.Ct. ____ (1986) are entitled to the presumption of correctness mandated by 28 U.S.C. §2254(d).

The Eleventh Circuit has failed to presume correct the state court's factual

resolution, i.e., that a defendant doesn't exercise his right to halt an interrogation by simultaneously continuing to speak and the Eleventh Circuit has failed to give due deference to its own district court's conclusion that petitioner's claim was unsubstantiated by the record. Rule 52(a), Federal Rules of Civil Procedure directs that the district court's findings of fact shall not be set aside unless clearly erroneous. Anderson v. City of Bessemer, 470 U.S. 564, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985). In ruling on this claim, District Judge King stated that he "carefully reviewed the transcript of the petitioner's taped confession, the suppression hearing, and the testimony of the officers involved in obtaining the confession." 582 F.Supp. 643; A-50-51. Judge King found "that the second prong of petitioner's claim, that Officers Mills and Young failed to scrupulously honor

[Christopher's] right to cut off the interrogation is simply unsubstantiated by the record." 582 F.Supp. 643, A-51. Further, the District Judge found that "at one point [Christopher] indicated he wished to stop and the police officer honored his request" (i.e., by ceasing the interrogation and advising Christopher of the procedures of extradition). See, 582 F.Supp. 643, A-51-52. Because the District Judge's determination is not clearly erroneous, the Eleventh Circuit's failure to apply Rule 52(a) merits summary reversal.

In Kuhlman, supra, this Court found clear error on the part of the circuit court in failing to accord the presumption of correctness mandated by 28 U.S.C. §2254(d); Patton v. Yount, 467 U.S. 1025, 81 L.Ed.2d 847, 104 S.Ct. 2885 (1984); Sumner v. Mata, 449 U.S. 539, 66 L.Ed.2d 722, 101 S.Ct. 764 (1981). In Kuhlman,

this Court stated:

> Without holding that any of the state court's findings were not entitled to the presumption of correctness under section 2254(d), the court of appeals focused on that one remark and gave a description of Lee's interaction with respondent that is completely at odds with the facts found by the trial court. . . . After thus revising some of the trial court's findings, and ignoring other more relevant findings, the court of appeals concluded that the police "deliberately elicited" respondent's incriminating statements. This conclusion conflicts with the decision of every other state and federal judge who reviewed this record, and is clear error in light of the provisions and intent of §2254(d).

91 L.Ed.2d at 385.

Here, as in Kuhlman, it is readily apparent that the decision of the Eleventh Circuit in this case has failed to apply the standard by which a circuit court of appeals may disregard a finding of fact made by the state court pursuant to Title 28 U.S.C. §2254(d). The Eleventh Circuit

rejected the state court's findings, not because they were clearly erroneous, nor because there was no support in the record, nor because it was a mixed question of law and fact, but because it disagreed with the prior reviewing courts. Whether the police honored the defendant's request to cut off questioning was no less a factual determination here than whether the police engaged in intimidation tactics as alleged in DelleRose or whether the police "deliberately elicited the defendant's statements" as in Kuhlman. See also, Crespo v. Armontrout, 818 F.2d 684 (8th Cir. 1987) [§2254(d)'s state court's presumption of correctness applies to the state court's implicit finding that defendant never invoked right to counsel before making oral statements].

The Eleventh Circuit disagreed because it found record support for its factual conclusions; thus, certiorari is man-

dated in order for this Court to once again instruct that a federal court may not reject a state court's factual findings simply because it finds record support for a contrary conclusion. Wainwright v. Goode, 464 U.S. 78, 78 L.Ed.2d 187, 104 S.Ct. 378 (1983) Accordingly, this case calls for summary reversal.

Under 28 U.S.C. §2254(d)(8), the federal court, in ruling on a petition for writ of habeas corpus, may not overturn a factual conclusion of the state court unless the conclusion is not "fairly supported by the record". This rule applies equally to findings of trial courts and appellate courts, Wainwright v. Goode, 464 U.S. 78, 78 L.Ed.2d 187 at 193, 104 S.Ct. 378 (1983). Here, the state trial court listened to the tape of Christopher's statements and was not persuaded that Miranda had been violated. (R. 1297-1298,

A-95-96) The Supreme Court of Florida found "no evidence that the appellant exercised his right to halt the interrogation. The appellant continued his conversation with the interrogating deputies of his own free will." 407 So.2d at 200. On federal habeas review, the district court likewise concluded that Christopher's claim that the police officers failed to scrupulously honor his right to cut off interrogation was "simply unsubstantiated by the record. The transcript of the confession shows that although petitioner indicated he would not continue, he in fact did continue to talk." Christopher v. State, 582 F.Supp. at 643, citing R. 1177, 1260. Consequently, all of the reviewing courts have previously concluded from their review of the record that Christopher did not exercise his right to halt the interrogation and continued to speak of his own free will. A three

member panel of the Court of Appeals for the Eleventh Circuit, on the other hand, refused to presume correct the state court's findings or give due deference to the findings of their own district judge. Because the state trial court's, appellate court's and federal district court's conclusions find fair support in the record, the Court of Appeals erred in substituting its view of the facts for those of the prior reviewing courts. Wainwright v. Goode, 78 L.Ed.2d at 193.

CONCLUSION

For these reasons Petitioner respectfully urges this Court to grant Certiorari and reverse the holding of the Eleventh Circuit Court of Appeals.

Respectfully submitted
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CERTIFICATE OF SERVICE

I, PEGGY A. QUINCE, Counsel for Petitioner, and a member of the Bar of the United States Supreme Court, hereby certify that on the _____ day of October 1987, I served three copies of the Petition for Writ of Certiorari on THOMAS R. BOLF, Esquire, Post Office Box 1900, Fort Lauderdale, Florida 33302, Attorney for Petitioner, and to the OFFICE OF THE CAPITAL COLLATERAL REPRESENTATIVE, Independent Life Building, 225 W. Jefferson St., Tallahassee, Florida 32301, by a duly addressed envelope with postage prepaid.

_____

OF COUNSEL FOR PETITIONER

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1987

No.

STATE OF FLORIDA,

Petitioner,

v.

WILLIAM D. CHRISTOPHER,

Respondent.

PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

APPENDIX OF PETITIONER

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TABLE OF CONTENTS

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Nos. 84-5521
and 85-5220

WILLIAM D. CHRISTOPHER,

Petitioner-Appellant,

versus

STATE OF FLORIDA,

Respondent-Appellee.

Appeals from the United States
District Court for the Southern
District of Florida

(July 23, 1987)

Before GODBOLD, KRAVITCH and HATCHETT,
Circuit Judges.
KRAVITCH, Circuit Judge:

William D. Christopher, a Florida prisoner under sentence of death, appeals the denial by the district court of his petition for habeas corpus and also the denial of his motion for relief from the judgment filed pursuant to Rule 60(b), Fed. R. Civ. P. We hold that petitioner is entitled to habeas relief. Accordingly, we reverse.

I. BACKGROUND

Bertha Skillin and George Ahern were shot to death in their Florida home. Christopher, who had been living in the home of the couple with his teenage daughter, Norma Sands, up through the day of the murder, was arrested September 21, 1977,[1] in Memphis, Tennessee, on a Florida warrant. Norma, and Christopher's half-brother and half-sister, Pete and Pam Scott, were with Christopher at the time of his arrest and also were taken into

custody.[2]

The following evening, two Florida police officers, Lieutenant Mills and Officer Young, accompanied by several Memphis officers, began interrogating Christopher. Initially Christopher denied killing the couple, claiming that Ahern had killed Skillin and then had committed suicide. Christopher said that he had found the couple dead on the day of the murder and had fled because he had a criminal record and Ahern had used Christopher's gun, a gun Christopher said he had sold to Ahern. Subsequently, after at least two hours of questioning and, according to Christopher, several violations of his right to cut off questioning, Christopher confessed to both murders. The initial confession was not recorded; immediately afterwards the tape recorder was turned back on and Christopher repeated his confession. This

confession was later played to the jury over Christopher's objection.

The State of Florida tried petitioner twice for the murders of Skillin and Ahern. The first trial, in May 1978, resulted in a hung jury and a mistrial. Following a change of venue, Christopher was retried in August, 1978. On August 18, 1978, Christopher was convicted by a jury of two counts of first degree murder. He was sentenced to death, as recommended by the jury.[3]

The Florida Supreme Court affirmed the convictions and sentence on direct appeal. Christopher v. State, 407 So.2d 198 (Fla. 1981), cert. denied, 456 U.S. 910, 72 L.Ed.2d 169 (1982). Subsequently, on appeal from the denial of a 3.850 motion for post-conviction relief and on a petition for writ of error coram nobis, the Florida court again upheld the convictions and the sentence. Christopher

v. State, 416 So.2d 450 (Fla. 1982).

Christopher, raising eleven claims,[4] petitioned the federal district court for a writ of habeas corpus, as well as for a stay of execution. The district court granted the stay on June 23, 1982; on March 13, 1984, the court denied habeas relief without an evidentiary hearing.[5] Christopher v. State, 582 F.Supp. 633 (S.D. Fla. 1984). Christopher appealed.

The petitioner subsequently filed with the district court a motion for relief from judgment pursuant to Rule 60(b), Fed. R. Civ. P., alleging that he did not testify at the hearing regarding suppression of the confession because the trial court refused to rule on the admissibility at trial of such testimony and his trial counsel did not know the law on this issue. The district court denied this motion.[6]

Petitioner appealed and this court

granted his motion for a consolidation.[7]

II. ADMISSIBILITY OF THE CONFESSION

Christopher claims that his confession should not have been admitted into evidence because it was obtained in violation of his right to remain silent, and thus was inadmissible under Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).[8] The district court denied this claim, apparently on the ground that Christopher had not invoked his right to remain silent because he not only failed to clearly assert the right but thereafter continued to speak.[9] Christopher, 582 F.Supp at 643-43. For the reasons set forth below, we reverse.

A.

In Miranda v. Arizona the Supreme Court established procedural safeguards to protect the constitutional rights of persons subject to custodial

interrogation. The Miranda Court held that unless law enforcement officers give certain specified warnings prior to questioning a person in custody,[10] and follow certain specified procedures during the course of any subsequent interrogation, the state may not use in its case in chief any statement by the suspect, over the suspect's objection. 384 U.S. at 476-479, 86 S.Ct. at 1629-30; accord Oregon v. Elstad, 470 U.S. 298, __, 105 S.Ct. 1285, 1298 (1985); Michigan v. Mosley, 423 U.S. 96, 99-100, 96 S.Ct. 321, 324-25, 46 L.Ed.2d 313 (1975).

Among the procedural safeguards established by the Miranda Court is the "right to cut off questioning." Miranda, 384 U.S. at 474, 86 S.Ct. at 1628. This right, established as a "critical safeguard" of the Fifth Amendment right to remain silent, Mosley, 423 U.S. at 103, 96 S.Ct. at 326, requires the police to

immediately cease interrogating a suspect once the suspect "indicates in any manner, at any time . . . during questioning, that he wishes to remain silent."[11] Miranda, 384 U.S. 473-74, 86 S.Ct. at 1627-28 (emphasis added); Mosley, 423 U.S. at 100, 96 S.Ct. at 325; see Martin v. Wainwright, 770 F.2d 918, 923-24 (11th Cir. 1985), modified, 781 F.2d 185, cert. denied, 107 S.Ct. 307, 93 L.Ed.2d 281 (1986).

Although established in Miranda, it was in Mosley, supra, that the Court delineated the scope of "the right to cut off questioning." Reiterating that this right serves as an essential check on "the coercive pressures of the custodial setting" by enabling the suspect to "control the time at which questioning occurs, the subjects discussed, and the duration of the interrogation," 423 U.S. at 103-04, 96 S.Ct. at 326, the Mosley Court reaffirmed Miranda's requirement

that "the interrogation must cease" when the person in custody "indicates in any manner" that he wishes to remain silent. 423 U.S. at 101-02, 96 S.Ct. at 325-26. This requirement was incorporated into the Court's holding that statements taken after a suspect indicates his desire to remain silent are inadmissible[12] unless the suspect's "'right to cut off questioning' was 'scrupulously honored.'" See Mosley, 423 U.S. at 101, 103-04, 96 S.Ct. at 325-26; United States v. Bosby, 675 F.2d 1174, 1182 (11th Cir. 1982) ("where a defendant asserts his right to remain silent . . . law enforcement officers are required to cease questioning [him.]").

B.

The determination of whether a suspect's right to cut off questioning was scrupulously honored requires a case-by-case analysis. United States v.

Hernandez, 574 F.2d 1362, 1369 (5th Cir. 1978).[13] Applying the principles of Miranda and Mosley to the facts of this case, we conclude that here, in sharp contrast to Mosley, the police did not "scrupulously honor" petitioner's right to terminate the interrogation.

In Mosley the Supreme Court found that the suspect's right to cut off questioning was "scrupulously honored" because "the police here immediately ceased the interrogation, resumed questioning only after the passage of a significant period of time and the provision of a fresh set of warnings, and restricted the second interrogation to a crime that had not been a subject of the earlier interrogation." 423 U.S. at 106, 96 S.Ct. at 327.

As is apparent from the following transcript of the confession, in the instant case the petitioner's rights were

accorded no such respect:

CHRISTOPHER: Then I got nothing else to say. If you're accusing me of murder, then take me down there.
MILLS: You were accused when you came in here. You knew you were accused --
CHRISTOPHER: That's right. That's right.
MILLS: -- you knew what you were accused of, and I told you what [your daughter] was accused of, so don't make out like you don't know what you're accused of.
CHRISTOPHER: Oh, ah, -- I know what I'm accused of. I know that I'm accused of both murders.
MILLS: I told you awhile ago you were being charged with both murders.
CHRISTOPHER: Okay then. I got nothing else to say.
YOUNG: You mean it's all right as long as we accuse you of one?
MILLS: But all of a sudden when you're accused of two, you don't --
CHRISTOPHER: I'm not saying that, I know that, didn't I tell you awhile ago that I knew that ya, I was accused of both murders?
YOUNG: Yeah. You -- you should know.
CHRISTOPHER: Okay then. What's the need of me saying anything then.
MILLS: What are you upset about?
CHRISTOPHER: You ask me? I'm upset about the fact that you're bringing my daughter up here, like I'm using her in this thing.

YOUNG: I'm asking you --
MILLS: I'm asking you to explain her actions in this thing? . . .

(Emphasis added).

Here the interrogation did not cease immediately after Christopher first indicated that he wished to remain silent, and, in fact, continued despite Christopher's repeated invocations of his right of silence. Moreover, the police continued to interrogate Christopher on the very crimes that were the subject of the interrogation when Christopher invoked his right to silence. Accordingly, there can be no doubt that the officers violated Christopher's right to cut off questioning; therefore, all statements taken during the unlawfully continued interrogation were inadmissible. See Martin, 770 F.2d at 923-23; United States v. Poole, 794 F.2d 462, 466-67 (9th Cir. 1986); Anderson v. Smith, 751 F.2d 96, 105 (2d Cir. 1984); see Hernandez, 574 F.2d at

1369-70; cf. Mosley, 423 U.S. at 105-06, 96 S.Ct. at 327 (interrogation immediately ceased, reinitiated on different subject more than two hours later, after warnings were readministered); Bosby, 675 F.2d at 1182 (interrogation immediately ceased, reinitiated two weeks later, after warnings were readministered).

C.

The State contests this conclusion and argues that we should affirm the district court's determination that Christopher did not adequately assert this right because he "voluntarily continued the interrogation." 582 F.Supp. at 644.

The State cannot prevail on this argument, however. Contrary to the district court's holdiong, a suspect's claim that the police violated his right to silence by failing to immediately terminate the interrogation is not negated by the fact that the suspect answered

additional questions after the police failed to scrupulously honor his request to end the questioning. See Martin, 770 F.2d at 923-24; Hernandez, 574 F.2d at 1369. "[A]n accused's post-request responses to further interrogation may not be used to cast retrospective doubt on the clarity of the initial request itself." Smith v. Illinois, 469 U.S. 91, ___, 105 S.Ct 490, 495, 83 L.Ed.2d 488 (1984) (emphasis in original). The fact that Christopher continued to speak, therefore, has no bearing on his claim that he invoked, and the police immediately failed to honor, his right to remain silent.

D.

The State also argues that Christopher's rights were not violated because his first attempt to assert his right to cut off questioning was equivocal[14] and the subsequent conversation between Christopher and the

officers was "nothing more than an attempt by a police officer to make a clarification." The State, moreover, claims that after this clarification Christopher continued to speak of his own volition.[15]

We note at the outset that the State mischaracterizes the issue. Contrary to the argument asserted by the State, a suspect need not "clearly ask[] that the interrogation stop," Appellee's Brief at 15, in order to invoke his right to remain silent. Rather, Miranda and its progeny require the police to terminate the interrogation if the suspect "indicates, in any manner, at any time . . . during questioning that he wishes to remain silent." Mosley, 423 U.S. at 100-01, 96 S.Ct. at 325, quoting, Miranda, 384 U.S. at 473-74, 86 S.Ct. at 1627. Thus, an equivocal indication of a desire to remain silent, like an unequivocal indication,

suffices to invoke Miranda's requirement that the interrogation cease. Martin, 770 F.2d at 924; Anderson, 751 F.2d at 103; United States v. Lopez-Diaz, 630 F.2d 661, 664-65 (9th Cir. 1980). Accordingly, we need not determine whether Christopher's first indication that he wished to remain silent was equivocal because, even if it were, the officers violated Miranda by failing to terminate the interrogation.

As the State observes, following an equivocal indication of the desire to remain silent, officers may ask questions designed to clarify whether the suspect intended to invoke his right to remain silent.[16] Martin, 770 F.2d at 924; Anderson, 751 F.2d at 103; see Lopez-Diaz, 630 F.2d at 665. The rule, however, permits "clarification," not questions that, though clothed in the guise of "clarification," are designed to, or operate to,[17] delay, confuse, or burden

the suspect in his assertion of his rights. Because such questions serve to keep the suspect talking, not to uphold his right to remain silent, they constitute unlawful "interrogation," not permissible clarification. See Mosley, 423 U.S. at 105-06, 96 S.Ct. at 327 (following an invocation of the right to silence the investigators may not attempt to wear down the suspect's resistance and make him change his mind); Martin, 770 F.2d at 924 (further-questioning must be limited to clarifying the equivocal request); Anderson, 751 F.2d at 103, 105 (inquiry as to why suspect wishes to remain silent is impermissible interrogation, not lawful clarification); Lopez-Diaz, 630 F.2d at 665; see also United States v. Johnson, 812 F.2d 1329, 1331 (11th Cir. 1986) (following an invocation of right to counsel the police may not even implicitly indicate to the

suspect that cooperating with the police would be beneficial to him); Nash v. Estelle, 597 F.2d 513, 517-18 (5th Cir.) (en banc) (the interrogator may not attempt to persuade the suspect to retract a previously-voiced request for counsel), cert. denied, 444 U.S. 981, 100 S.Ct. 485, 62 L.Ed.2d 409 (1979).

Employing these principles, we conclude that the officers' response to Christopher's purported equivocal invocations of his right to remain silent constituted an unlawful continuation of the interrogation, and not permissible interrogation. After Christopher's initial assertion of his right to remain silent, the officers, if they considered the assertion equivocal, legitimately might have asked a simple question to clarify whether Christopher wanted to stop talking. Instead, Officer Mills responded by challenging Christopher: "You were

accused when you came in here. . . . [Y]ou knew what you were accused of, and I told you what [your daughter] was accused of, so don't make out like you don't know what you're accused of." This statement did not clarify whether Christopher wished to remain silent. Instead, in violation of Miranda, it challenged the basis of Christopher's decision to remain silent. See Anderson, 751 F.2d at 105. In addition, the response could have reinforced Christopher's previous concerns that his daughter might be implicated in the murders, impermissibly indicating that Christopher should reconsider his decision not to talk and instead should help his daughter by confessing the murders. See Johnson, 812 F.2d at 1331 (after a request for counsel the interrogation must cease; the police may not indicate to suspect that it is in his interest to cooperate with them); cf. Mosley, 423 U.S. at 104,

96 S.Ct. at 327 (police behavior condoned where, after request to stop questioning, the police did not try "in any way to persuade [the suspect] to reconsider his position.").

Furthermore, Christopher responded to the officers' statements by again indicating his desire to remain silent: "Okay then. I got nothing else to say." This comment, considered in the totality of the circumstances, cannot be viewed as anything other than an unequivocal invocation of his right to remain silent. Poole, 794 F.2d at 466 (interrogation should have ceased after suspect said he has "nothing to talk about").[18] Therefore, no further "clarification" was either necessary or permissible; yet even then the officers did not terminate the interrogation. This continued questioning of Christopher was in violation of his Miranda rights.[19]

Martin, 770 F.2d at 924 (where request is equivocal further questioning must be limited to clarifying the request; once it is clarified questioning must cease); Anderson, 751 F.2d at 103 (police may "clarify" only where the request to cut off questioning was equivocal); see Smith v. Illinois, 469 U.S. at __, 105 S.Ct. at 494 ("Where nothing about the request for counsel or the circumstances leading up to the request would render it ambiguous, all questioning must cease.") (emphasis added).

E.

The State argues that, even if the officers did not scrupulously honor Christopher's right to cut off questioning, the confession nevertheless is admissible because Christopher "initiated" the continued questioning when, during the discussion of extradition, Christopher said, "Can I ask

one question?"[20]

The origins of the initiation doctrine lie in the Miranda Court's ruling that Miranda's procedural safeguards apply only to "custodial interrogation" of a suspect: defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom in any significant way." Miranda, 384 U.S. at 444, 86 S.Ct. at 1612 (emphasis added). Based on this limitation, the Court in subsequent right to counsel cases has held that Miranda's per se bar against "interrogation" following a request for counsel does not prohibit the police from taking statements during a suspect-initiated conversation because suspect-intitiated conversation is not "interrogation." Edwards v. Arizona, 451 U.S. 477, 485-86, 101 S.Ct. 1880, 1885, 68 L.Ed.2d 378 (1981); see Oregon v. Bradshaw, 462 U.S. 1039, 1044-45, 103

S.Ct. 2830, 2834-35, 77 L.Ed.2d 405 (1983).

While we recognize that Edwards and Bradshaw are right to counsel cases, and that Mosley governs the admissibility of statements made following the suspect's invocation of his right to cut off questioning, Mosley, 423 U.S. at 104, 96 S.Ct. at 326, we accept the State's implicit claim that there are situations where the "initiation" test of Edwards/Bradshaw govers the admissibility of statements made after a suspect has invoked his right to terminate questioning. See Smith v. Wainwright, 777 F.2d 609, 618 (11th Cir. 1985), cert. denied, 106 S.Ct. 3275 (1986). Although right to counsel and right to silence cases are distinguishable because the right to silence is not protected by a per se rule, compare Mosley, 423 U.S. at 101-04 & n.10, 96 S.Ct. at 325-26 & n.10, with

Edwards, 451 U.S. 484-85, 101 S.,Ct. at 1884-85, the two types of cases can be similar because the invocation of the right to silence does raise a per se bar to further interrogation in certain circumstances. At the very least a suspect's request to cut off questioning serves as a complete bar to any questioning related to the subject of the initial interrogation for a "significant period of time" after the request. Hernandez, 574 F.2d at 1369 (police must wait a "significant period of time" before resuming questioning); see Mosley, 423 U.S. at 102, 96 S.Ct. at 325-26 (Miranda prohibits "the immediate cessation of questioning, and . . . a resumption of interrogation after a momentary respite."). Thus, for a "significant period" following a request to cut off questioning, the suspect stands in virtually the same position as he would be

had he requested counsel: the police are barred from interrogating him. Hernandez, 574 F.2d at 1369.

Non-interrogatory conversation may occur during this "significant period," however. We conclude therefore that during this "significant period" the Edwards/Bradshaw rule merges with the test of Mosley to render inadmissible statements obtained during a "significant period" after a request to cut off questioning, unless the statements were the product of a conversation initiated by the suspect under the test of Edwards/Bradshaw. See Smith v. Wainwright, 777 F.2d at 618. We further conclude that both prongs of the Edwards/Bradshaw rule apply: where the "initiated" conversation is not "wholly one-sided," but instead involves interrogation by the police, the suspect's statements are admissible only if the

suspect both initiated the dialogue and waived his previously-asserted right to silence. Smith v. Wainwright, 777 F.2d at 618; see Connecticut v. Barrett, U.S. ___, 107 S.Ct. 828, 831, 93 L.Ed.2d 920 (1987); Bradshaw, 462 U.S. at 1044-45, 103 S.Ct. at 2834;[21] Edwards, 451 U.S. at 486 n.9, 101 S.Ct. at 1885 n.9.

Although the "initiation" doctrine of Edwards/Bradshaw does apply to some right to silence cases, it does not affect the outcome in the instant case. The first prong of the initiation test requires that it was the suspect, not the police, who "initiated," or "reopened," the dialogue. Bradshaw, 426 U.S. at 1044-45, 103 S.Ct. at 2834. "Initiation" means to "begin" or "set-going"; in the interrogation context, it means that the suspect "started," not simply "continued," the interrogation. Therefore, the first prong of the initiation test requires that

any previous police-initiated interrogation have ended prior to the suspect's alleged initiatory remark; for, just as one cannot start a engine that is already running, a suspect cannot "initiate" an on-going interrogation.[22] See Smith v. Wainwright, 777 F.2d at 618 ("If [the suspect's] request that questioning cease was honored, . . . the question then becomes who initiated the subsequent interrogation.") (emphasis added); cf. Bradshaw, 462 U.S. at 1041-42, 103 S.Ct. at 2833 (initial interrogation had clearly ended before the suspect "initiated" a conversation with the police).

In the instant case, minutes before the alleged "initiation," Christopher again invoked his right to cut off questioning. Rather than honor this right and terminate the interrogation, Officer Mills "switched the subject" to whether

Christopher would agree to be extradited to Florida on the murder charges. The State argues that this change of subject was a sufficient honoring of Christopher's right to permit the conclusion that Christopher's question was an "initiation." Mosley, however, requires more than a switch of subject after an invocation of the right to silence; rather, Mosley requires the termination of the interrogation. See Martin, 770 F.2d at 924; Anderson 751 F.2d at 103.

Although the police may terminate an interrogation without falling into total silence, any discussion with the suspect other than that "relating to routine incidents of the custodial relationship" must be considered a continuation of the interrogation. See Bradshaw, 462 U.S. at 1045, 103 S.Ct. at 2835. Specifically, the police may make routine inquiries of a suspect after he requests that they

terminate questioning, such as whether he would like a drink of water. See id. They may not ask questions or make statements which "open up a more generalized discussion relating directly or indirectly to the investigation," as this constitutes interrogation. Id. (emphasis added); Johnson, 812 F.2d at 313; see Rhode Island v. Innis, 446 U.S. 291, 301, 100 S.Ct. 1682, 1689-90, 64 L.Ed.2d 297 (1980).

Because here the officers' inquiries regarding Christopher's extradition "relate[d] directly or indirectly to the investigation," these questions were an unlawful continuation of the interrogation. Johnson, 812 F.2d at 313; see Poole, 794 F.2d at 467 (agent's questions as to suspect's name, and date of birth following a request to cut off questioning constituted impermissible interrogation); United States v. Webb, 755

F.2d 382, 389 (5th Cir. 1985) (officer's inquiry as to what kind of trouble the suspect was in constituted unlawful interrogation). Accordingly, we conclude that, because the initial police-initiated interrogation was still in progress when Christopher asked the question at issue, this question was not an "initiation;" rather, it was merely a question posed during the course of an on-going police-initiated interrogation. Therefore, given that an unlawfully-continued police-initiated interrogation is not rendered lawful simply because a suspect asked a question, we reject the State's argument and hold the confession inadmissible.

III. HARMLESS ERROR

At oral argument, for the first time, the State suggested that the admission of Christopher's confession was at worst harmless error.

The appropriate standard for determining whether this error was harmless is set forth in Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 828, 17 L.Ed.2d 705 (1967).[23] Martin, 770 F.2d at 932-33; Hernandez, 574 F.2d at 1372. In order for an error to be deemed "harmless" under Chapman the State must prove beyond a reasonable doubt that the admission of the confession did not contribute to the verdict obtained. Chapman, 386 U.S. at 24, 87 S.Ct. at 828; Martin, 770 F.2d at 932 n.23. The State must show that the evidence that remains after the unlawful confession is excluded not only is sufficient to support the verdict, but overwhelmingly establishes the defendant's guilt beyond a reasonable doubt. Harryman v. Estelle, 616 F.2d 870, 876 (5th Cir.) (en banc), cert. denied, 449 U.S. 860, 101 S.Ct. 161, 66 L.Ed.2d 76 (1980); see Brown v. United States, 411

U.S. 223, 230-32, 93 S.Ct. 1565, 1569-70, 36 L.Ed.2d 208 (1973); Milton v. Wainwright, 407 U.S. 371, 372-73, 377-78, 92 S.Ct. 2174, 2175-76, 2178, 33 L.Ed.2d 1 (1972).

Because confessions carry "extreme probative weight," Hernandez, 574 F.2d at 1372, the admission of an unlawfully obtained confession rarely is "harmless error." In fact, we have ruled the admission of an unlawful confession harmless only in limited instances, such as where there was in evidence at least one other lawful confession by the defendant.[24] Compare Martin, 770 F.2d 932-33 & n.24 (harmless error where a lawful confession was admitted at trial) and United States v. Davidson, 768 F.2d 1266, 1271-72 (11th Cir. 1985) (same) with Hernandez, 574 F.2d at 1372 & n.22 (admission of confession not harmless despite defendant's presence at scene of

major marijuana unloading operation because there was insufficient direct evidence connecting the defendant to the truck or its contents) and United States v. Blair, 470 F.2d 331, 338 (5th Cir. 1972) (admission statement not harmless where it "provided the Government with a key link in the evidentiary chain of proof"), cert. denied, 411 U.S. 908, 93 S.Ct. 1536, 36 L.Ed.2d 197 (1973); accord Milton v. Wainwright, 407 U.S. at 372-73, 92 S.Ct. at 2174-75 (alleged involuntary confession to police officer posing as cell mate would be harmless in light of three previous valid confessions); Poole, 794 F.2d at 467-68 (admission statements not harmless despite eyewitness testimony that defendant robbed the bank); but cf. Felder v. McCotter, 765 F.2d 1245, 1250-51 (5th Cir. 1985) (use of unlawful confession not harmless even though there was a second, less detailed, admission in

evidence), cert. denied, 106 S.Ct. 1523 (1986).

We conclude that here the admission of the unlawful confession was not "harmless error." The unlawful confession was the only confession admitted at trial and it was heavily relied upon by the prosecution. There were no eye witnesses to the murders. Moreover, the physical evidence introduced (blood on Christopher's shoes, fingerprints in the house, Christopher's gun), as well as both the evidence of Christopher's incestuous relationship with Norma and Norma's testimony, were not inconsistent with petitioner's original murder-suicide alibi. Furthermore, Heinrich Schmid, the Collier County medical examiner, testified only that he "[did] not believe" that Ahern's wounds were self-inflicted.[25] A reasonable jury could have concluded, based on the lawfully introduced evidence,

that the State had not established petitioner's guilt beyond a reasonable doubt. This conclusion is buttressed by the fact that Christopher's first trial resulted in a hung jury. We find, therefore, that the erroneous admission of the unlawful confession was not harmless error.

Accordingly, we REVERSE and REMAND to the district court with directions to grant the writ of habeas corpus with respect to both convictions, conditioned upon the State's affording Christopher a new trial.[26]

1/ Although the district court stated that Christopher was arrested September 22, 1977, the record indicates otherwise. This date is not relevant to our holding, however.

2/ The factual background of this case is contained in the district court's opinion. Christopher v. State of Florida, 582 F.Supp. 633, 635-36 (S.D. Fla. 1984). The district court's findings regarding the facts of the murders apparently is based on Christopher's confession, as there is no independent evidence in the record to support these findings.

3/ The trial judge sentenced petitioner to death after finding that there were two aggravating circumstances: (1) petitioner previously had been convicted of violent felonies, and (2) the murders were "heinous, atrocious or cruel," and that there were "no" mitigating circumstances.

4/ Christopher raised the following claims in district court: (1) that the evidence was insufficient to support (a) the finding of aggravation that Christopher had prior convictions for attempted rape and assault to commit murder, (b) the finding of aggravation that the two murders were heinous, atrocious or cruel and (c) the finding that the aggravating circumstances outweighed the mitigating ones; (2) that he was denied his right to a jury composed of a representative cross-section of the community by the exclusion of two jurors who voiced only general objections to the death penalty; (3) that the confession was inadmissible since (a) it was unlawfully obtained in violation of Christopher's

right to cut off questioning and (b) it was coerced; (4) that the admission of irrelevant and highly prejudicial evidence on Christopher's incestuous relationship with his daughter Norma denied him his right to a fair trial; (5) that the trial court's refusal to require the State to pay the cost of sodium pentothal test and its grant of the prosecutor's motion to preclude the admission of polygraph test results allegedly favorable to Christopher denied Christopher his right to a fair trial; (6) that the trial court erred in failing to provide a psychiatric examination since petitioner's competency to assist at trial and sanity at the time of the murders was in issue; (7) that the Florida death penalty statute is unconstitutional; (8) that he was denied due process as a result of the Florida Supreme Court's receipt of ex parte information concerning Christopher during direct appeal; (9) that the State improperly suppressed exculpatory evidence, in particular a tape recording of Norma which indicates that she had a motive to kill the couple; (10) that he has a right to a new trial given the newly discovered evidence that Norma confessed to petitioner's mother that she, Norma, had shot the couple; and (11) that his trial lawyer was ineffective.

5/ The district court denied Christopher both a certificate of probable cause (CPC) and leave to appeal in forma pauperis (IFP). This court granted both CPC and IFP by order dated December 27, 1984.

6/ The district court denied petitioner both CPC and IFP. This court granted both CPC and IFP by order dated August 21, 1985.

7/ In this consolidated appeal, petitioner challenges the district court's denial of the Rule 60(b) motion. He also contests the district court's denial of habeas relief on eight different grounds: (1) the confession was inadmissible because (a) it was obtained in violation of his right to cut off questioning and (b) it was coerced; (2) two jurors were improperly excluded; (3) the "heinous, atrocious, or cruel" aggravating circumstance was improperly applied in this case; (4) the prior conviction aggravating circumstance was improperly applied; (5) the trial court unlawfully used a non-statutory aggravating circumstance; (6) the trial court's finding that there were "no" mitigating circumstances is not supported by the record, and (7) the district court improperly denied an evidentiary hearing on petitioner's ineffective assistance of counsel claim.

8/ Christopher also alleges that the confession was coerced and thus was inadmissible. See note 7, supra. Given that we hold that the confession was inadmissible because it was obtained in violation of Christopher's Miranda rights, we need not, and therefore do not, reach the voluntariness issue. We do observe, however, that the district court incorrectly treated the voluntariness determination as a finding of fact and thus accorded deference to the state court finding under 28 U.S.C. §2254(d). 582 F.Supp at 643. Although the state court's findings of historical fact must be accorded a presumption of correctness, voluntariness is a question of law and requires independent federal determination. Miller v. Fenton, 474 U.S. 104, ___, 106 S.Ct. 445, 450, 88 L.Ed.2d 405 (1985).

9/ On direct appeal, the state court incorrectly treated the right to cut off questioning claim as if it were a voluntariness claim. The court did not even mention Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), in that portion of the opinion. Christopher v. State, 407 So.2d 198, 200-01 (Fla. 1981).

10/ The warnings must inform the person in custody "that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." Miranda, 384 U.S. at 444, 86 S.Ct. 1612.

11/ The Miranda Court also established procedural safeguards to protect the right to consult with counsel. Miranda, 384 U.S. at 474-75, 86 S.Ct. at 1628. The present case, however, does not involve the procedures to be followed if the person in custody requests counsel since Christopher never made such a request.

12/ We are concerned here only with the use of an allegedly unlawful confession in the prosecution's case in chief. Cf. Harris v. New York, 401 U.S. 222, 225-26, 91 S.Ct. 643, 645-46, 28 L.Ed.2d 1 (1971) (a voluntary but unlawfully-obtained statement may be admitted by the prosecution to impeach the defendant on cross-examination).

13/ The Eleventh Circuit, in the en banc decision Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981), adopted as precedent decisions of the former Fifth Circuit rendered prior to October 1, 1981.

14/ In particular, the state claims that Christopher's first statement, "[t]hen I got nothing else to say" was not a clear invocation of the right to cut off questioning because it was rendered conditional by his statement "[i]f you're accusing me of murder, then take me down there." (Emphasis added).

15/ The State's account of the interrogation in its brief varies substantially from the record. The State claims that after Officer Mills' initial "clarifying" statements "Christopher continue[d] of his own volition to speak." Appellee's Brief at 15 (emphasis supplied). While the State concedes that there were other attempts to terminate the interrogation, the State does not mention that Christopher responded to this purported clarification with a second request to cut off questioning.

16/ [T]he term 'interrogation' under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.

Rhode Island v. Innis, 446 U.S. 291, 301, 100 S.Ct. 1682, 1689-900, 64 L.Ed.2d 297 (1980) (footnotes omitted).

17/ The determination of whether questioning constituted interrogation, as opposed to clarification, "focuses primarily upon the perceptions of the suspect." Innis, 446 U.S. at 301, 100 S.Ct. at 1689.

18/ See People v. Carey, 227 Cal.Rptr. 813, 814-15, 183 Cal.App.3d 99 (2d Dist. 1986) (suspect's statement "I ain't got nothing to say" was an unequivocal invocation of right to silence), cert. denied, sub nom., California v. Carey, 107 S.Ct. 1297, 94 L.Ed.2d 153 (1987).

19/ Furthermore, even had we concluded that this second attempt to invoke his right to silence also was equivocal, we still would find that the officers violated Christopher's Miranda rights because, as can be seen from the quoted portion of the interrogation, the officers did not respond to this request by attempting to clarify Christopher's intent. Instead, they responded by challenging Christopher in an attempt to keep him speaking, despite his previous assertion of his right to silence. Accordingly, whether or not Christopher's second request was equivocal, the officers' response was unlawful under Miranda. See Martin v. Wainwright, 770 F.2d 918, 924 (11th Cir. 1985), modified, 781 F.2d 185, cert. denied, 107 S.Ct. 307, 93 L.Ed.2d 281 (1986); Anderson v. Smith, 751 F.2d 96, 105 (2d Cir. 1984).

Moreover, immediately after this second request to stop, and second unlawful continuation of the interrogation, Christopher made a third, albeit somewhat equivocal, request to stop ("Okay then. What's the need of me saying anything then"). Once again the officers improperly failed to terminate the interrogation. Instead, Mills asked Christopher: "What are you upset about?" Given the previous requests to stop, at this point there certainly was no need for clarification. Moreover, Mills' question

was not a "clarification." Rather, it was interogation because it invited a response from Christopher that was not restricted to the issue of whether Christopher wished to terminate the interrogation. Mills' response thus constituted yet another violation of Christopher's Miranda rights. See United States v. Poole, 794 F.2d 462, 467 (9th Cir. 1986) (the interrogating officer's questions as to suspect's assertion of his right to silence constituted impermissible interrogation); Anderson, 751 F.2d at 105 (asking a suspect why he wishes to remain silent following an invocation of the right to silence is unlawful interrogation, not permissible "clarification"); see also United States v. Johnson, 812 F.2d 1329, 1331 (11th Cir. 1986) (officer's inquiry following request for counsel: "Do you want to know what will happen to you," "related directly or indirectly to the investigation" and thus constituted unlawful interrogation); cf. Michigan v. Mosley, 423 U.S. 96, 104-05, 96 S.Ct. 321, 327, 46 L.Ed.2d 313 (1975) (police "scrupulously honored" the suspect's right to cut off questioning where they "immediately ceased the interrogation and did not try either to resume the questioning or in any way to persuade [the suspect] to reconsider his position"); Bradshaw, 462 U.S. at 1045-46, 103 S.Ct. at 2835 (subsequent questioning following invocation of right to counsel was permissible where the police stopped interrogation after defendant requested counsel).

20/ The relevant portion of the transcript reads as follows:

> CHRISTOPHER: Well, look, I'm just constantly telling lies, look I ain't got nothing to say

at all, Pete, why I have, you know, and that's it. I ain't saying nothing else.

MILLS: Okay.

CHRISTOPHER: That I'm charged with two murders, --, is all I can say.

MILLS: Okay. this brings us up to another point, which has nothing to do with what we're talking about. Ah, we're here from Florida and these warrants, these warrants are from Florida. Which you know you have to be extradited down there. That can come about several different ways, you can sign on whether you want ------- here. Ah, would you sign a waiver an go back?

CHRISTOPHER: When are you all taking me back if I sign a waiver? . . . [short exchange on when taking him back if he signs].

CHRISTOPHER: Right. If I don't sign, how long have I got before you all take me back?

MILLS: Well, we'll go ahead and initiate the ah, the proceedings, and ah, everhow they progress, well, as soon as the proceedings are over, then, we're going back down.

YOUNG: I can't say how long it will be, it might take a week, I don't know.

BOSWELL: It's usually 30 to 60 days.

MILLS: Is that right?

CHRISTOPHER: Can I ask one question?

MILLS: Sure. . . .

(emphasis added).

Christopher then requested the officers to turn off the tape recorder and asked about what was going to happen to his daughter Norma. According to the officers' testimony at trial, after this discussion of Christopher's daughter the officers changed the topic of conversation back to the subject of Christopher's involvement in the murders.

21/ Although Justice Rehnquist's opinion Bradshaw is a plurality opinion, joined by only three other justices, the four justices in the dissent agreed with the plurality that in order for statements following a request for counsel to be admissible, the state must show that the suspect "initiated" further conversation with the police and that the suspect validly waived his previously asserted right to counsel and right to silence under the standard announced in Johnson v. Zerbst, 304 U.S. 458, 464, 58 S.Ct. 1019, 1023, 82 L.Ed.2d 1461 (1938). Where the dissent split from the plurality was the definition of "initiation." Bradshaw, 462 U.S. at 1051, 1053-54 & n.2, 103 S.Ct. at 2838, 2839-40 & n.2 (Marshall, J. dissenting). Although the plurality said that to "initiate" a conversation the question that "reopens" the dialogue need only "evince[] a willingness and a desire for a generalized discussion about the investigation," 462 U.S. at 1045-46, 103 S.Ct. at 2835, the dissent stated that the initiatory "inquiry must demonstrate a desire to discuss the subject matter of the criminal investigation." 462 U.S. at 1055, 103 S.Ct. at 2840 (emphasis added).

22/ This holding not only is consistent with, it is necessitated by, Mosley. For, as the Court stated in Mosley, the underlying purpose of the

right to cut off questioning is to give the subject control over "the time at which questioning occurs, the subjects discussed, and the duration of the interrogation," so as to "counteract[] the coercive pressures of the custodial setting." Mosley, 423 U.S. at 103-04, 96 S.Ct. at 326. Allowing a suspect to control the timing of an interrogation through his ability to "initiate" it serves this purpose; permitting the police to continue a custodial interrogation despite a request to stop in the hope that the suspect will eventually ask a question does not. See id. at 102-03, 96 S.Ct. at 325-26.

23/ Although the admission of a coerced confession is never harmless error, Rose v. Clark, 106 S.Ct. 3101, 3106, 92 L.Ed.2d 460 (1986), citing, Chapman v. California, 386 U.S. 18, 23 n.8, 87 S.Ct. 824, 828 n.8, 17 L.Ed.2d 705 (1967), an otherwise unlawful but voluntary confession can be harmless error, Martin, 770 F.2d at 923-33. Because we conclude that the admission of Christopher's unlawful confession was not harmless error, we need not address the voluntariness issue.

24/ Those cases in which we have ruled that the admission of an unlawful confession was harmless even where it was the only confession admitted generally have been cases in which, unlike this case, there was direct, uncontradicted, physical evidence of guilt -- such as that the defendant was found holding the drugs he was charged with possessing. E.g. Harryman v. Estelle, 616 F.2d 870, 876-78 & n.15 (5th Cir.) (en banc), cert. denied, 449 U.S. 860, 101 S.Ct. 161, 66 L.Ed.2d 76 (1980) (unlawful confession that contents

of condom found on defendant's person was heroin was harmless in light of laboratory tests identifying the substance to be heroin); United States v. Hill, 430 F.2d 129, 132 (5th Cir. 1970) (defendant's statement to customs agent that truck contained liquor was harmless where state introduced evidence obtained during lawful search of the truck demonstrating that the truck did contain liquor).

25/ Furthermore, the erroneous admission of the confession certainly affected the conduct of Christopher's defense. See Harryman, 616 F.2d at 877 n.15.

26/ Because we conclude that the confession was inadmissible and therefore a new trial is necessary, we need not, and therefore do not, address Christopher's other challenges to the denial of his habeas petition. Nor do we address whether the district court properly denied Christopher's Rule 60(b) motion.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 84-5521 and
85-5520

WILLIAM D. CHRISTOPHER,
Petitioner-Appellant,

versus

STATE OF FLORIDA,
Respondent-Appellee.

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Appeals from the United States District Court for the Southern District of Florida

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ON PETITION(S) FOR REHEARING
(SEP 3 1987)

BEFORE: GODBOLD, KRAVITCH and HATCHETT, Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed by appellee, State of Florida is denied.

ENTERED FOR THE COURT:

/s/ Phyllis Kravitch
United States Circuit Judge

William D. CHRISTOPHER, Petitioner,

v.

STATE OF FLORIDA, Respondent.

No. 82-1293-Civ-JLK.

United States District Court,
S.D. Florida.

March 13, 1984.

EXCERPTS FROM OPINION
FULL TEXT OF OPINION AT
582 F.SUPP 633 (S.D. FLA. 1984).

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

JAMES LAWRENCE KING, District Judge.

* * *

III. VOLUNTARINESS OF CONFESSION

The third issue raised by petitioner is that (1) his confession was not freely and voluntarily given; and (2) the police failed to honor his requests to cut off questions, in violation of the Fifth, Sixth and Fourteenth Amendment.

Specifically, petitioner contends in his writ that Officers Mills and Young "who obtained the confession of the Petitioner, unfairly exploited Petitioner's weakness for his family and protecting them by implying that his confession would preclude their involvement." As to the second ground, petitioner contends that the record is clear that he wanted to cut off interrogation and that the police officers continued, in violation of his rights under **Miranda v. Arizona**, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

Again, this issue was fully considered on appeal to the Florida Supreme Court which affirmed the trial court's finding of fact that petitioner's confession was voluntary and not coerced. **Citing Howell v. State**, 66 Fla. 210, 63 So. 421 (1913); **Jarriel v. State**, 317 So.2d 141 (Fla. 4th DCA 1975) **cert. denied**, 328 So.2d 845 (Fla. 1976).

Petitioner does not challenge that his confession was made knowingly and intelligently.

[7] This Court will not disturb a trial judge's finding of fact unless it reaches constitutional dimensions. **Wainwright v. Goode, supra.**

[8] Under federal law, the test for voluntariness is whether the confession was "extracted by any sort of threat of violence, (or) obtained by any direct or implied promises, however slight (or) by the exertion of improper influence." **See Brady v. United States,** 397 U.S.742, 753, 90 S.Ct. 1463, 1471, 25 L.Ed.2d 747 (1970); **Hutto v. Ross,** 429 U.S. 28, 30, 97 S.Ct. 202, 203, 50 L.Ed.2d 194 (1976).

[9] This Court has carefully reviewed the transcript of the petitioner's taped confession, the suppression hearing, and the testimony of the officers involved in obtaining the

confession. The Court concludes that the finding of the trial judge that the confession was freely and voluntarily given is fully supported by the record and that petitioner has not suffered a constitutional deprivation. This ground of petitioner's claim is clearly without merit.

The Court also finds, as did the Florida Supreme Court, that the second prong of petitioner's claim, that Officers Mills and Young failed to scrupulously honor petitioner's right to cut off interrogation is simply unsubstantiated by the record. The transcript of the confession shows that although petitioner indicated he would not continue, he in fact did continue to talk. (R. 1177, 1260). The transcript shows that at one point petitioner indicated he wished to stop and the police officers honored his request:

"Christopher: Well, Look, I'm just constantly telling lies, look I ain't got nothing to say at all, Pete, why I have, you know, and that's it. I ain't saying nothing else.

Mills: Okay.

Christopher: That I'm charged with two murders, ------, is all I can say.

Mills: Okay, This brings us up to another point, which has nothing to do with what we're talking about. Ah, we're here from Florida and these warrants, these warrants are from Florida. Which you know you have to be extradited down there. That can come about several different ways, you can sign on whether you want ------ here. Ah, would you sign a waiver and go back? (T-68, 69)

Later, the transcript of the Motion to Suppress hearing reveals that petitioner began asking questions (R. 1177, 1260) and continued to speak, voluntarily, confessing to the murders. (R.1262).

In **Edwards v. Arizona**, 451 U.S. 477, 486, 101 S.Ct. 1880, 1885, 68 L.Ed.2d 378

(1981), the United States Supreme Court considered the question whether, after a suspect had invoked his right to counsel by cutting off questioning until counsel was provided, that the suspect could subsequently be interrogated without the presence of counsel. The Court held that once the suspect has clearly asserted his right to counsel, all custodial interrogation must cease and may not be resumed until either counsel is provided and present or until the suspect voluntarily initiates further discussion. **Edwards**, supra, at 488, 101 S.Ct. at 1886. In **Solem v. Stumes**, U.S. ___, 104 S.Ct. 1338, 79 L.Ed.2d 579 (1984), however, the Court found that the effect of further interrogation by the police after a request for counsel was not such as to taint the truth worthiness of the subsequent confession and, therefore, **Edwards** was not to be retroactively

applied in collateral review of final conviction.

Applying those standards to the case now before the bar, the court finds a lesser standard should be applied where, as here, the suspect only indicates an intention to invoke this fifth amendment right to remain silent and does not clearly invoke his right to counsel. **Michigan v. Mosley**, 423 U.S. 96, 104, n.10, 96 S.Ct. 321, 326, n.10, 46 L.Ed.2d 313 (1975). But even the higher standard of the right to counsel would not cause a difference in this case because the suspect did not clearly ask for the assistance of counsel nor did he clearly discontinue the interrogation. In fact, the suspect not only voluntarily continued the interrogation he did so without interruption. This is in stark distinction from **Edwards** where the police had discontinued the interrogation because

of the suspect's clear request for counsel and where the interrogation was re-initiated by the police the following day by telling the suspect hat he "had to" talk to them. Further, even if **Edwards** were otherwise controlling in the case at bar it would not apply because **Solem** held that **Edwards** did not apply retroactively.

This Court finds that petitioner's confession was freely and voluntarily given and that the trial judge's actions in admitting the taped confession into evidence was proper. Therefore, this claim for relief must be denied as not reaching constitutional proportions.

582 F.Supp. at 643-644.

William D. CHRISTOPHER, Appellant,

v.

STATE of Florida, Appellee.

No. 55698.

Supreme Court of Florida.

Dec. 10, 1981.

EXCERPTS FROM OPINION
FULL TEXT OF OPINION AT
407 SO.2D 198 (1981).

ADKINS, Justice.

* * *

407 So.2d at 200.

Appellant presents six procedural issues upon which he relies for reversal of the sentence of death, remand for a new trial, remand for imposition of a life sentence, or remand for a new sentencing hearing.

The six issues presented for our consideration are as follows:

> 1. Did the trial court systematically exclude for cause prospective jurors who did not state they were irrevocably committed to vote against the death penalty, but voiced only

general, indefinite reservations to capital punishment, in violation of the Sixth and Fourteenth Amendments to the United States Constitution, and article I, sections 9 and 16 of the Florida Constitution?

2. Did the trial court err in admitting appellant's confession because (a) he did not freely and voluntarily confess, and (b) the police failed to honor his request to cut-off questioning, in violation of the Fifth and Fourteenth Amendments to the United States Constitution, and article I, section 9, of the Florida Constitution?

3. Did the trial court commit reversible error in allowing over defense objections and a motion in limine, testimony regarding the sexual relationship between appellant and his daughter?

4. Did the trial court err in denying appellant's motion for a medical evaluation and for administration of sodium pentothol at county expense?

5. Did the trial court's granting of the state's motion to preclude the appellant from introducing evidence of his polygraph test render the death sentence unconstitutional?

6. Were the aggravating factors found by the court

improper; should mitigating factors have been found; and did the mitigating factors outweigh the aggravating factors?

[1,2] As to the first issue, the law is settled that the competency of a challenged juror is a mixed question of law and fact and is to be determined by the trial judge in his discretion. Manifest error must be demonstrated before the judge's decision will be disturbed. **Singer v. State**, 109 So.2d 7, 22 (Fla. 1959); **Ashley v. State**, 370 So.2d 1191, 1194 (Fla. 3d DCA 1979). No such error has been demonstrated in the case **sub judice.**

Turning to the second issue, the admissibiliy of the confession, we find no evidence that the appellant exercised his right to halt the interrogation. The appellant continued his conversation with the interrogating deputies of his own free will.

[3] The test for admissibilty of a confession is whether it is freely and voluntarily made. **Howell v. State**, 66 Fla. 210, 63 So. 421 (1913); **Jarriel v. State**, 317 So.2d 141 (Fla. 4th DCA 1975), **cert. denied**, 328 So.2d 845 (Fla. 1976).

[4] Appellant claims improper coercion during the course of the interrogation. A case in which improper coercion was found is **Jarriel v. State**, cited above. In **Jarriel** the defendant was improperly urged by direct or implied promises to make a statement. The interrogating officer told defendant his wife would be arrested unless defendant made a statement. 317 So.2d at 141. No such urging or promising took place in the case **sub judice**. The confession was freely and voluntarily made, and was, therefore, properly admitted.

* * *

407 So.2d at 200-201.

EXCERPT FROM STATE TRIAL COURT HEARING ON CHRISTOPHER'S MOTION TO SUPPRESS HELD MAY 19, 1978, IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR COLLIER COUNTY, FLORIDA

BEFORE THE HONORABLE CHARLES T. CARLTON, CIRCUIT JUDGE

* * *

DIRECT EXAMINATION OF ASSISTANT STATE ATTORNEY PELLECCHIA TO OFFICER YOUNG

[PROSECUTOR]: Q. Did there come a time when the tape recorder was turned off?

[OFFICER YOUNG']: A. Yes, there was.

Q. And approximately how long after you turned on the tape recorder did you turn it off?

A. I'd say about an hour and four minutes.

Q. At whose request was the tape recorder turned off?

A. Mr. Christopher.

Q. You are pretty precise with your timing. Did you have occasion to play the tape recently?

A. Yes, sir.

Q. So, the defendant requested that the tape recording be turned off? Was the tape in fact turned off?

A. Yes, I turned it off.

Q. And what occurred then?

A. He was more or less talking to Lieutenant Mills at that time, that he asked a question again in reference to his daughter Norma, where she was at, and then asked what charges were pending against his sister and brother.

* * *

(R. 1176-1177)

EXCERPT FROM STATE TRIAL COURT HEARING ON CHRISTOPHER'S MOTION TO SUPPRESS HELD MAY 19, 1978, IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR COLLIER COUNTY, FLORIDA

BEFORE THE HONORABLE CHARLES T. CARLTON, CIRCUIT JUDGE

* * *

CROSS EXAMINATION OF OFFICER YOUNG (DEPUTY SHERIFF, COLLIER COUNTY, FLORIDA) BY DEFENSE COUNSEL HINES.

[DEFENSE COUNSEL HINES]: Q. I notice that at one point during your conversation with the defendant -- this is during the first statement; this is later, at the point in the statement where you have pretty much told Christopher, "Look, we don't believe what you are telling us. We know what happened down there and what you are telling us is not consistent with what we know." He made the statement -- I believe you were the person who said this: "How could Charlie shoot himself three times?" It's a fact, is it not, that Ahern was not shot three times?

[OFFICER YOUNG]: A. No, sir, he was not.

Q. Why did you make that statement? Wasn't that somewhat deceptive, to make that statement to the defendant?

A. I don't know why I said three times, to tell you the truth.

Q. I notice at the bottom of page 16 of the statement that Christopher makes the statement in response to question from Mills, "I told you that before that you're being accused of both murders."

Christopher's response: "Okay. Then I've got nothing else to say."

But, however, the questioning then continues for three more pages of transcript. Is that not true?

A. Yes, sir.

Q. And it's a fact, is it not, that Captain Smith called down and ordered the release of Pam Scott and Pete Scott during the interval of time that the tape was

off?

A. I don't know when the call was made to release them. All I know is what I heard him tell Christopher.

Q. What did he tell Christopher?

A. I heard him, "Tell Mary to pick Pam and Pete up."

* * *

(R. 1204-1205)

EXCERPT FROM STATE TRIAL COURT HEARING ON CHRISTOPHER'S MOTION TO SUPPRESS HELD MAY 19, 1978, IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR COLLIER COUNTY, FLORIDA

BEFORE THE HONORABLE CHARLES T. CARLTON, CIRCUIT JUDGE

* * *

DIRECT EXAMINATION OF POLICE CAPTAIN SMITH (COMMANDER OF HOMICIDE SQUAD, MEMPHIS, TENNESSEE) BY ASSISTANT STATE ATTORNEY PELLECCHIA.

[PROSECUTOR]: Q. You stated that sometime around 7:15, the defendant was brought up to your office. Who was present in your office at the time the defendant arrived?

[CAPTAIN SMITH]: A. There was Lieutenant Catcheron who is now retired from the Memphis Police Department, Sergeant Boswell from the Memphis Police Department, myself from the Memphis Police Department, Harold Young from Collier County, and Curtis Mills from Collier County -- sorry, Boswell, I left him

out. He was also there.

Q. Would you relate to the Court, please, Captain Smith, the chronology of events which took place upon the defendant's arrival?

A. When Mr. Christopher came in, he was introduced to all of us by Curtis, Lieutenant Curtis Mills. And he was advised of his rights as per your rights card by Lieutenant Mills and was set down and was talked to in our presence. And during that time, he did give a taped statement, a statement on tape.

Q. Okay, how many times in your presence was he advised of his rights by Investigator Young?

A. About three times, three times by Investigator Young. And certainly he was advised by our arresting officer which is a policy of the police department.

Q. At the time that he was advised of these various rights, did he ever invoke

his right to counsel?

A. No, sir, he never -- never at any time did he request an attorney or anyone else.

Q. Did he ever invoke his right to remain silent?

A. No, sir.

Q. Okay, after he was advised of his rights, then I understand that a tape recorder was turned on?

A. That's correct.

Q. And you testified that he was readvised of his rights?

A. On the tape recorder, yes, sir.

Q. Did there come a point in time when the tape recorder was turned off?

A. Yes, sir.

Q. And at whose request was this?

A. Mr. Christopher's request.

Q. Okay, and what occurred after he requested the tape recorder be turned off?

A. Well, it was -- he was wanting to

know what -- what Norma was going to be charged with, and a lot of conversation was going on. We were more or less having coffee, cigarettes, taking a break. And continuous talking was going on between Lieutenant Mills and Bill Christopher. And occasionally Bill would ask me for a cigarette; I'd give him a cigarette, give him a cup of coffee, complained of being cold without a jacket in our jail. We assured him we would get him a jacket, so he would not be cold up there any longer. And he again gave the statement of murder-suicide.

Q. And this is off the tape - similar taped statement that he gave on the tape?

A. That's correct, it was. And the conversation went along, and then I asked Lieutenant Mills if I might say something to Mr. Christopher, and he said yes. And at that time I told Mr. Christopher that the facts did not sustain the -- the story

that he was telling were not not sustained by the facts as we knew them from the investigation, that he undoubtedly had a logical reason for doing what he did, that it might be logical to him. It was -- it might not be logical to me, nor would it be logical to Curtis Mills, but I'm sure it would have been logical to Mr. Christopher. And I also told Bill that he might as well go ahead and tell the truth about it and get everybody in there out of any involvement whatsoever.

Q. And then what occurred?

A. Then he went back and did orally confess to the murder of the two people here in Naples, Florida.

Q. Okay, and subsequent to this -- when you say oral, you mean, nontaped --

A. Nontaped, yes.

Q. -- statement? Okay,after this statement, what then occurred?

A. Then Investigator Young asked if

he could -- if he would write it down in an oral -- in a statement form. And Bill advised that it would be all right to put it back on the tape, and he didn't write too well. So, therefore, the tape was turned on again. He was again advised of his rights and he did give a statement on the tape the second time.

Q. Okay, at some point in time, did the defendant request to make a phone call?

A. Yes sir, he really did. Just right after the confession of the killing, he requested to call his mother, Mary Steele (phonetic), and permission was granted by me to use my phone in my office which was setting right there on my desk as it shows -- or near my desk in there. And while he was talking to Mary Steele, he asked what was going to happen to Pete and Pam. And I told -- I looked at Lieutenant Mills and asked if he wanted to

pursue the prosecution of aiding and abetting, and he said no. And I said well, I don't either. And I told Bill to tell Mary to come on up, pick -- when she brought the clothes and cigarettes, to pick up Pete and Pam and take them home with them.

Q. Up to this point, had there been any discussion -- prior to that point, had there been any discussion during these interviews with regard to releasing Pam or Pete or Norma, for that reason?

A. No.

Q. And this is the first time it came up with which he gave you an oral confession?

A. That's correct.

Q. And then I take it after the telephone call and the conversations and the coffee, then you went back on the tape, and he repeated some of what he had told you off the record -- off the tape?

A. Yes, sir.

Q. Then the interview was concluded at that time?

A. That's correct.

* * *

(R.1228-1233)

EXCERPT FROM STATE TRIAL COURT HEARING ON CHRISTOPHER'S MOTION TO SUPPRESS HELD MAY 19, 1978, IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR COLLIER COUNTY, FLORIDA

BEFORE THE HONORABLE CHARLES T. CARLTON, CIRCUIT JUDGE

* * *

DIRECT EXAMINATION OF OFFICER MILLS (DEPUTY SHERIFF, COLLIER COUNTY) BY ASSISTANT STATE ATTORNEY PELLECCHIA.

[PROSECUTOR]: Q. Okay, did there come a point in time of this first taped statement when a request was made to turn off the tape recorder?

[OFFICER MILLS]: A. Yes, sir.

Q. And who made the request?

A. Christopher did.

Q. Okay, and what occurred right after that?

A. He asked us, he said, "Well, now what's going to happen to Norma" and his half sister, Pam.

Q. Okay, and who responded to that question or those questions?

A. I asked him the question, I said, "As far as Pete and Pam goes, I don't know. These things happen in Tennessee."

Q. Okay, what did you say about Norma?

A. I said, "But Norma is being charged as a runaway, and she may be returned to Florida under those charges."

Q. At this point in time, had you discussed with Captain Smith or any of the officers, Memphis Police Department, that were present during this interview, as to the disposition of Pam and Pete as to whether or not they would be charged, released, or whatever?

A. We had been told that they were arrested at the same time he was. We -- we hadn't discussed what the disposition of that case was or would possibly be.

Q. Okay, then what occurred after the discussion about Norma, Pam and Pete?

A. He reassured me again that Norma

had nothing to do with this situation, and that he had taken her to school that morning and dropped her off. And she wasn't there; she didn't have anything to do with it. And then he went through basically the same statement he had given me earlier about how there was a suicide-homicide situation.

Q. Okay, at some point in time while this tape recorder is turned off, did you indicate to him in some way that you had facts indicating that it was different than he was telling?

A. Yes, sir, after he told -- gave me this statement through again, I told him that what he was telling me didn't match up with the facts in the case, and that I didn't really believe what he was telling me, that I had every reason to believe that it was different.

Q. Okay, up to this point in time, had Captain Smith done any of the

interrogating?

A. No, sir, he hadn't said anything.

Q. Did Captain Smith, after you made that statement, make any sort of a statement to Christopher?

A. He talked to him briefly, just told him that what had happened in killing these people at that time might have seemed logical to him, but even though that reason wouldn't be a logical reason to himself or to me or to anyone else in the room, but at that time it probably seemed logical to him.

Q. Okay, and what occurred after that?

A. Bill didn't say anything right away. He just kind of remained silent there for a few minutes, and then he started talking about when Norma was born.

Q. That would have been 15 years ago?

A. Yes, sir, he went back telling me that when she was born, he was in the

penitentiary and that she was given away without his knowledge. He didn't know anything about it until he got out of the penitentiary, that he couldn't find her, that nobody would help him find her.

Q. Okay, were you questioning him about these points?

A. No, sir, he told me about the events that happened throughout this 15 year period and led up to right up until when he met her a couple of years before that and how he went to Florida because of a -- he wanted to be with her, and he had heard about George Ahern pulling these things on her, looking at her undercover and so forth. And after he got down here, this thing happened. He killed both of them.

Q. And he admitted that to you off the statement?

A. Yes, sir.

Q. And so it was a rather lenghty

statement he made, I take it, covering a span of some 15 years?

A. Yes.

Q. And his relationship with the different parties in this particular case.

A. Yes.

Q. The witnesses? Okay, then what occurred subsequent to him making these admissions to you?

A. I talked to him a few minutes. Then I asked him about Mrs. Ahern, how it happened that she got killed. And he explained to me why he killed her. And so then we filled in some of the details on there, talked with him about some of the details of the thing. Then we kind of took a break. We got a cup of coffee. The ones that smoked, smoked cigarettes. Of course, anyone that wanted to, smoked during the whole time during that conversation, but Bill asked could he make a telephone call.

Q. And was he permitted to do so?

A. Yes, sir, Captain Smith provided him with one of the phones there in their office. He said he wanted to call his mother.

Q. Do you know -- did he indicate his purpose for wanting to call his mother?

A. I didn't really understand exactly why. I mean, he didn't tell me exactly why he wanted to call; he just wanted to call her.

Q. What occurred while he was on the telephone?

Q. While he was talking on the phone, he put his hand over the phone. He turned to Captain Smith, and he says, "What about Pam and Pete?" He says, "What can I tell her about them?"

So, Captain Smith looked over to us, and he says, "Do you guys want to push this thing against them?" He says, "Do you want to go to trial on their charges?"

And we say, "No, we really have no reason to; we have no reason to do that."

So, he turns back to Bill. And he said, "Well, why don't you just tell her when she comes down, to bring your clothes. She can just pick them up; we'll go ahead and release them."

Q. Prior to this time, had any indications been made or any statements been made to the defendant, Christopher, that Pam, Pete, or Norma would be released?

A. No, sir.

Q. And this is subsequent to his having given you a long narrative statement ending in his admission that he killed George Ahern and Bertha Skillin?

A. Yes, sir.

Q. Okay, and then what occurred after the telephone conversation?

A. We set back down, talked for a few minutes there. And Investigator Young

asked Bill if he would write this statement out for us. And he says, "Well," he says, "I don't want to write it." He says, "Why don't we just turn the tape back on and tape it."

Q. Okay, and was that in fact done?

A. Yes, sir, it was.

Q. And was he advised of his rights again a third time?

A. Yes sir.

Q. On that tape?

A. Investigator Young advised him of his rights when he started it on the tape.

Q. Did he indicate that he understood his rights?

A. Yes, sir.

Q. Did he express a desire for an attorney?

A. No, sir, he didn't.

Q. Did he express a desire to remain silent?

A. No, sir.

Q. Okay, Lieutenant Mills, did you at any time, at any point in time, promise the defendant anything in order to get him to make statements?

A. No, sir.

Q. Did you hold out any hope of reward?

A. No, sir.

Q. Did you threaten him?

A. No, sir.

Q. Did you coerce him?

A. No, sir.

Q. Did you ever indicate to him that you would be lenient toward Pam, Pete and/or Norma or himself in order to get these statements?

A. No, sir.

Q. Did anyone in your presence do so?

A. No, sir.

Q. Did you ever have an occasion prior to meeting Christopher and being with Captain Smith or some of the Memphis

investigators that were in Captain Smith's office, to kind of sit down with them and devise a scheme that you would all detain Pete, Pam and Norma in custody, let the defendant know that in the hopes that this might coerce him, so to speak, or induce him to give you statements, hang it over his head, so to speak?

A. No, sir.

Q. That never occurred?

A. No, sir.

Q. And these statements were freely and voluntarily given?

A. Yes, sir.

Q. And he even indicated that on the second statement at the end of that statement, did he not?

A. Yes, sir, he did.

MR. PELLECCHIA: No further questions.

* * *

(R. 1260-1267)

EXCERPT FROM STATE TRIAL COURT HEARING ON CHRISTOPHER'S MOTION TO SUPPRESS HELD MAY 19, 1978, IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR COLLIER COUNTY, FLORIDA

BEFORE THE HONORABLE CHARLES T. CARLTON, CIRCUIT JUDGE

* * *

CROSS-EXAMINATION OF OFFICER MILLS (DEPUTY SHERIFF, COLLIER COUNTY) BY DEFENSE COUNSEL HINES.

[DEFENSE COUNSEL HINES]: Q. You were involved in the investigation of these homicides or what you believe to be homicides from the -- from day one, so to speak, where you not? You were there at the scene when the bodies were found?

[OFFICER MILLS]: A. Yes, sir.

Q. And you had all the information that your invesigation here had developed about those murders, what you believed to be murders, the autopsy results, how many times these persons were shot, the physical evidence? You knew all of that when you went to Memphis, did you not?

A. We had a preliminary report from the autopsy. We didn't have the doctor's finished report from the autopsy report. But we had talked with him in person. We got a preliminary report from him.

Q. Well, based on the information you had prior to going to Memphis and based on your experience as an investigator with this department, you believed these deaths to be homicides, did you not?

A. Yes, sir.

Q. You did not feel this was a murder-suicide situation, did you?

A. No, sir.

Q. When Christopher gave you this first statement consistenting of 19 pages, you did not believe it to be a truthful statement?

A. No, sir, I didn't.

Q. And subsequently, he gave another statement which you feel is a truthful statement as to what happened there, is it

not?

A. I believe it's substantially the truth, yes.

Q. I believe that the second statement he made is substantially accurate based on your knowledge of the case?

A. Yes sir.

Q. And the physical evidence and so forth?

A. Yes, sir, I do.

A. I notice looking at the statement, that there's a substantial portion of it. I'll show it to you if you want me to, but the last -- about the last six pages of the statement is basically you make a -- you make an accusation against Christopher. You say we're accusing you of these murders, and then you begin to talk about the fact that you know the facts which you do. And you don't feel that what he's telling you is accurate

based on the facts as you know them to be, right?

A. Yes, sir, I'll -- in response to this question, I answered his question that he was being accused of these murders.

Q. Okay. So, at that time you were attempting to extracate a statement from him that would be consistent with the facts, were you not?

A. I wanted to explain to him why I didn't feel what he was telling me at that time to be the truth.

Q. Hoping that he would then tell you what you believed to be the truth, the second statement?

A. I felt that we sould know exactly what happened.

Q. Okay, this would have been, in essence, a type of questioning technique, hoping that he would then come around and tell you what -- what really happened?

A. I don't know if you call it a technique; it's just part of our conversation.

Q. Okay, I noticed that at one point in the statement towards the end there, I think it's about, oh, three pages from the end, that the defendant makes -- says that he doesn't want to say anything else. But you went on and questioned him after that, did you not?

A. I would have to see that to know what portion you're talking about.

Q. Bottom of page 16 there.

A. Yes, sir, I recall this. If you listen to the tape on this, you can tell that when he said this, he just kept on talking.

Q. Okay.

A. It was no break in his conversation or anything, he -- he -- he just made one statement right after this. He said that I have nothing else to

say, and he just kept right on talking.

Q. He went right on talking after Young asked him another question?

A. It doesn't show on the transcript, but if you listen to the tape, there was actually some comments by him between the time -- while Young was making that statement. They were actually talking over each other; he kept right on talking.

Q. This statement, the first statement, there's several references here in this statement to the family of the defendant, to Norma. Don touched on some of them during the -- during his questioning of you, and you would -- you would acknowledge, would you not, that this was -- that the fact that his family was in custody and was being held on possible aiding and abetting charges was involved in this first statement, was it not? It was discussed?

A. Not at great length. I think I

explained to him that -- well, it was after the tape was turned off, I explained to him that we had nothing to do with that; that was a Memphis charge. During that first statement, I don't recall talking to him about his family other than the fact that Norma was caught up in this situation.

Q. All right, do you recall the defendant requesting that he be given a polygraph examination concerning whether he had in fact committed these homicides as you had contended that they are homicides during the time that the tape was turned off?

A. I don't recall him asking for a polygraph on the homicides at all. He mentioned the fact that someone had said that he was having sex with Norma and that he would take a polygraph regarding that point. I don't recall him mentioning a polygraph about Norma Sands.

Q. All right, how long did the questioning of the defendant -- how long were you in the room with the defendant prior to the tape being turned on initially?

A. Possibly five minutes, no more.

Q. And this time period mainly consisted of an introduction of all the persons present to the defendant, right?

A. Yes, sir.

Q. And there was no other conversation to speak of?

A. Nothing that -- you know, we just told him we were from Naples. And we were investigating these homicides, and we wanted to talk with him.

Q. Did Officer Boswell have any conversation with the defendant at that time?

A. No, sir, not that I remember.

Q. Did -- to the best of your recollection, do you ever remember him

requesting the presence of an attorney at that time or at any other time?

A. Never, no, sir.

* * *

(R. 1269-1274)

EXCERPT FROM STATE TRIAL COURT HEARING ON CHRISTOPHER'S MOTION TO SUPPRESS HELD MAY 19, 1978, IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR COLLIER COUNTY, FLORIDA

BEFORE THE HONORABLE CHARLES T. CARLTON, CIRCUIT JUDGE

* * *

TRIAL COURT'S ORAL PRONOUNCEMENTS/FINDINGS

THE COURT: All right. Well, the Court's going to adopt the laws set forth in the 1976 Florida Supreme Court, and the Court is going to find on this particular issue that the defendant, Mr. Christopher, was properly explained his rights, and that he understood and appreciated them. It is based on the fact that he was

advised of his rights three different occasions. And on one occasion, he definitely stated that he did waive his right to have an attorney, or words to that effect.

(R. 1287)

* * *

THE COURT: All right. Well, the Court's of the opinion that, first of all, the Court can only make a decision on these type of motions of what is before the Court. The Court has listened to and heard the statements as recorded by the law enforcement officers. And the Court's of the opinion that the law enforcement officers in the first instant did not offer any promise or leniency for the defendant's family, and that the statement was not based upon hope for any leniency because the officers just did not offer it to him in examining the record as a whole.

And two, even if in construing the matter in the defendant's most favorable light, the Court's of the opinion that the Heaton case at 326 Southern 2nd would control, and that case has a similar fact situation as ours. But the Court is going to consider the -- first of all, there was no promise of leniency made, and that's the basis of the Court's ruling. The Court will deny the motion to suppress the confession.

[PROSECUTOR/MR. PELLECCHIA]: Your Honor, may I have a specific ruling with regard to that if the Court make a finding on the record, the confession was freely and voluntarily, and intelligently made, and request also that the Court rule that the statements of Mr. Christopher to the officers who have testified here today should be admissible, ruled as admissible at the time of trial.

THE COURT: All right, the Court has

previously ruled that Miranda has been complied with. The Court feels that the defendant was explained his rights, and that he understood and appreciated what his rights were.

The Court is further ruling that the confession was freely and voluntarily made, and it was not made because of threats or force or promises of reward or leniency to the family.

And the Court's of the opinion that the motion to suppress is denied, and that if it is submitted into evidence at the trial, the Court will admit the confession. Anything further, gentlemen?

* * *

(R. 1287, 1297-1298)

TAPE RECORDING #1

YOUNG: This will be an interview with William David Christopher. The date is September 22, 1977. Present at the interview will be Lt. Curtis Mills, Collier County Sheriff's Department, Sgt. J.C. Boswell, Memphis P.D. Homicide, Lt. McCachren, Memphis Homicide, and Captain Tommy Smith, Memphis Homicide. Bill, before we go any further, with this tape, you've been advised of your rights once and I'm going to read them to you again.

CHRISTOPHER:
Okay.

YOUNG: You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer and have him present with you while you are being questioned. If you cannot afford to hire a lawyer, one will be appoitned to represent you before any questioning if you wish. You can decide at any time to exercise these rights and not answer any questions or make any statements. Do you understand each of these rights as I have explained to you?

CHRISTOPHER:
Yea.

YOUNG: Having these rights in mind, do you wish to talk to us now?

CHRISTOPHER:
Yes.

YOUNG: Okay. The time now is 7:36 p.m.

CHRISTOPHER:
Okay.

MILLS: I want to ask a couple of things, how old are you?

CHRISTOPHER:
35.

MILLS: How far did you go in school?

CHRISTOPHER:
Well, when I was locked up, I completed my GED and around about a year and a half of college.

MILLS: Do you read and write the English language?

CHRISTOPHER:
Yes.

MILLS: You have no problems understanding when we talk to you in the English language in other words?

CHRISTOPHER:
No, I understand good.

YOUNG: Bill, we started out awhile ago, we were talking about the death of Bertha and George Ahern.

CHRISTOPHER:
Right.

YOUNG: That would be Bertha Skillen and George Ahern, and you were

telling us that you did have knowledge of that death, is that correct?

CHRISTOPHER:
Yes, sir.

YOUNG: Would you go ahead in your own words and tell us about that day --

CHRISTOPHER:
Okay.

YOUNG: -- and any previous knowledge of this incident?

CHRISTOPHER:
Okay. I'm just going to go ahead and just start from what I know about it and we can play it when we get back into other details about these phone calls and ladies and all that stuff.

YOUNG: Right. We -- we may have to speak up a little bit more.

CHRISTOPHER:
Okay. At approximately ten minutes after 7:00 I left to carry my daughter, Norma Gay Sands to Lely High School.

YOUNG: This is in Florida?

CHRISTOPHER:
Right, Naples, Florida. When I left from taking her to school that morning, I told her that I would pick her up about 12:00 o'clock, because Boots and Charlie, they deliver those Meals on Wheels, they take food around

to older people that couldn't get out.

YOUNG: Yes.

CHRISTOPHER:
So I knew that they'd be gone before then, at where we could get our, you know, get our stuff out of the house. Like I said, we had been planning on me and her leaving for the last 3 or 4 days.

YOUNG: You had planned this previously?

CHRISTOPHER:
Yeah.

YOUNG: About leaving? Then you knew --

CHRISTOPHER:
Several people knew about it, I believe even Boots knew about it. But anyhow, to get back to this, I -- I got back to the house and somewhere around 8:00 o'clock, I had a cup of coffee with Boots, we talked for a few minutes, and she got a phone call, and some lady. Like I said, I'm not sure if it was a long distance or what, but I knew it was upsetting her. Okay. Her and Charlie was having a few words about it and when they did, I told them I'd be back. I went down to the construction site in the back of the Glades where the company that I had supposed to be working for were working, and there wasn't but one guy back there, and uh, he told me that the rest of the crew was to be

back shortly.

YOUNG: Was this the Glades Country Club?

CHRISTOPHER:
Yeah, the condominiums there. Okay. I came back to the house, I went to the 7-11 too, and I got a couple beers. I come back to the house, wait a minute, I'm getting mixed up. Boots was gone when I came back to the house.

YOUNG: This was the first time?

CHRISTOPHER:
Yeah. Yeah.

YOUNG: At 8:00 o'clock?

CHRISTOPHER:
Well, it was after 8:00, I guess it was pretty close to 9:00.

YOUNG: When you came back she was gone?

CHRISTOPHER:
Yeah.

MILLS: When you came back from taking --

CHRISTOPHER:
Yeah. I'm sorry.

MILLS: -- Norma to school?

CHRISTOPHER:
That's right. Uh, yeah. That's after I went down the first time uh, to the, it's right behind the parking site, you know, four or five buildings back, where they got a construction site going up back there. And Bootsie's car

was gone when I first got back.

YOUNG: That was around 8:10 or 8:15 right?

CHRISTOPHER:

Yeah. This is after I had a cup of coffee with her. I went down there, I wasn't down there too long, and I went to 7-11 and got two beers and come back to that site, and then came back by the house. Boots was gone, and uh, Charlie told me that as soon as she got back whatever, that's when me and him would go to the bank. So I left from there then and went back down to the construction site, and most of the crew was down there then, and I sat down there and talked to these guys, and I guess I messed around a little over an hour.

YOUNG: Did anybody talk to you there?

CHRISTOPHER:

Uh, yeah, one of the boys there, I think he was one of the assistant foremen, his name was Gary.

YOUNG: What about the last name?

CHRISTOPHER:

My mother's got my billfold with the boy's address, his name and everything, name and telephone number on there. And I gave her my billfold yesterday. Okay. When I come back to the house, like I say, it had to be in the neighborhood of 10:00 o'clock, or a little bit after, Charlie met

me at the door. I mean, so I could go in, and he come on out and said come on we'll run on down to the bank now, and instead of taking my car, we took Bootsie's car. He handed me the keys and told me to drive. Charlie don't like driving much. Okay. We got down to the bank and pulled into the drive-in window, uh --

YOUNG: What bank was that?

CHRISTOPHER:
Citizens Bank.

YOUNG: Of Naples?

CHRISTOPHER:
Yeah. And uh, the lady inside the teller's cage told us, that uh, Mr. Ahern said, you'll have to come inside to see one of the gentlemen upstairs or something like that, they had a hold on $300 or something of his, you know, in his account or something. I think what he had done, he had borrowed a $1,000 or withdrew a $1,000 out of his savings and put it in his checking account a few days before or something and, he had $306. I think $306 odd dollars and some odd cents left. Okay. So I pulled back in front of the bank and he told me to come on with him and I'll explain this. He called the guy's name upstairs that he talked to. So, we went upstairs and he told him, you know, he said, my friend here Charlie, he knew I was leaving

that day, he said my friend here needs to borrow some money, you know, for his car, he's got to make a trip, and uh, he found out exactly what the hold was on his money, and about his checks coming in and all, so the guy told him some facts, that'd be all right we'll just put a hold on one of his checks, which I think one of them was $400 and he got a couple more, you know, a month 300 and something or over $400 whatever. So, he just told him he'd put a hold on the check you know, and uh, all I asked Charlie for was $200. Well he wanted to withdraw all of it out of the bank, well the guy told him he said that it would be best, you know, to leave something in here, just go ahead and take $300 and leave the $6 whatever it was, that way we could keep your account open and everything, so that's what he did, and uh, he had to give him a little slip to go back downstairs to the teller, you know, to get the money. So, me and him went back downstairs and the guy came down right after that, he had to make another withdrawal slip, and he presented this to, I think she was a Spanish lady, there was two tellers standing there, and uh, they give him the money $300 you know, and uh --

YOUNG: Were you with him inside?

CHRISTOPHER:
Yeah. He handed the money to me, and we went on back out to the

car, and started back you know, to the house. So, when we pulled up in front of the house, you know, and started to get out and get in, I asked him if I should lock the door of the car, 'cause she always keeps it locked, and he said no, that's all right, just, you know, bring the keys, he said, let me have the keys. So handed the keys, and we started back in the house like, and he stopped, and he says man, would you like to have a beer. I said sure, I knew I had three beers in the refrigerator. Whether he had drank them or not I don't know, he drank, you know, 2 or 3 six packs a day. He said, why don't you go down and get us a six pack then.

YOUNG: What time was this now Bill?

CHRISTOPHER:
Well, like I said, it had to be around 10:00 o'clock when I got back to the apartment. Now however long it takes to drive from there to about two and a half miles, it's about three miles from there to Citizens Bank, that's three and a half, you know, going down whatever street that is out in front out there, by the time it took us to talk to the teller, go inside and talk to the man upstairs, and drive back, uh, it couldn't have been more than an hour I guess. If it was that long.

YOUNG: It must have been about 11:00 o'clock then, when you got back?

CHRISTOPHER:

I imagine so. Okay. I knew that they had to get ready to go onto the -- I mean, the Meals on Wheels thing, well, instead of going straight on out to the car and leaving to go and get a six pack, Charlie went on in the house. All right, now I just knew that I had another pack of cigarettes you know, inside the house, because I just about smoked the whole pack, so I went inside, I knew I had them laying on the chair. I went in to get them, and Charlie turned around the looked at me when I opened the door, you know, he looked at me kind of funny. He said what's the matter? I said, I left my cigarettes here, okay. I see a spot of big blood in front of the refrigerator, I said, damn Charlie, what's the matter. He said, I hear the water running back in the bath. He said, Boots cut her finger real bad, well I never thought no more about this, you know. Never thought nothing else about it. I said, I'll be right back. So I turn and walked on out then, and went out and got in my car. I left went around by the Glades and come back up around by the fire department to the 7-11. I know that man would tell you the same thing because I would go over there almost every day. I got a six pack and I got two packs of Pall -- I mean, Marlboro 100s for my daughter, and got me two packs of cigarettes. I came back, Charlie was in the kitchen, and things

looked like he had something down there wiping that blood up, you know off things, and then I seen kind of faded tracks on the carpet, you know. And Charlie looked at me kind of funny, he say, did you get the beer? I said, yes. So I set the beer down on the, on the table. He was standing right there at the kitchen, in front of the phone. Boots' purse was sitting in the, there was a chair sitting there. And I kept looking at that, you know, and I felt well hell, if somebody cut their finger, why would there be just one big puddle, it was like it would be some splattered, you know, everywhere. And uh, Charlie got one of the Budweisers open, and took one drink out of it, and set it down. I opened me one, I had already drank one out there by the time I come back to the house, and I opened another beer and uh, he said I'll be back in a minute. All right. I went over there and sat down on the white chair by the front door, the t.v. was on. The doors, I know that morning when I left were open, the sliding doors, and this window beside me, the long window was open. All right. It was closed, the air conditioner wasn't on then, but the thermostat had kicked it off or whatever, but the doors were shut, and the little iron bar was still there in front of the one in the living room. I looked at that and I kept looking up and I kept hearing the water running

back there, but I never did hear Boots' name, and I couldn't have been sitting on that arm of that chair two minutes, I heard a gunshot.

YOUNG: Well, where did the gunshot come from?

CHRISTOPHER:
Bedroom.

YOUNG: How many bedrooms are in the house?

CHRISTOPHER:
Two.

YOUNG: Which bedroom was it?

CHRISTOPHER:
There's Bertha and Charlie's bedroom, there's Norma's bedroom. They were back -- he was back in that room. I walked back there and I knocked on the door, they always keep a little do not disturb sign on there, when the door is shut, that meant, you know, you don't come in there and mess with nobody, that's the way Boots was, you know. And, uh, I knocked on the door, I said, Charlie? And he never answered. I opened the door, Charlie was laying on the bed, over on that side, next to that wall, and he had kind of like headed back his legs were jerking, you know, muscle spasms, and I said, Charlie, what's the matter with you, and he fell off in the floor then. Well, my gun, I say it's my gun, it's not my

gun, I got the gun from Gene Carrington, all right, it's laying on the bed, I looked over Charlie and Charlie had a hole, looked like he had a hole with this blood coming out of his head right in here somewhere, and it scared me so bad. You know, I thought, well lord god, you know, and I looked over at the bathroom door, and the bathroom door was shut too, and there's still water running in there, you know, the water's been running for this length of time. Now you can see dark splotches --

MILLS: You said the door was closed?

CHRISTOPHER:

Yeah. There was dark splotches on the floor, on the carpeting, and I thought, well, Boots is in there, you know, and I knew then something wasn't right, and I opened the door, and I couldn't open it all the way on account of Boots, she was laying there. I pushed the door on open. She had a blue blanket like it had been wrapped around her head, I reached over and felt her neck, you know, see if like any kind of pulse, and I felt her and I couldn't get none, and I went back to Charlie and I felt his arm. I didn't do nothing then but pick up that gun, 'cause I knew it was going to be traced to me. That's where I made my mistake is picking up that gun, I guess, I don't know.

YOUNG: How did Charlie get this gun in

the first place?

CHRISTOPHER:
I sold it to him.

YOUNG: When?

CHRISTOPHER:
About three days before that.

YOUNG: Okay.

MILLS: How much?

CHRISTOPHER:
$60. The man had the money, you know. I told him I would take whatever he'd give it to me, you know.

YOUNG: Is this the same gun you had last night with you?

CHRISTOPHER:
That was underneath the seat of the car, yeah. The same 22. All right, I got that gun, I put it in my britches, I went in there to get Norma's -- I got two of her suitcases she had packed, we went bought in that store next to Maas.

YOUNG: Sears?

CHRISTOPHER:
Next to Sears, that big department store. Anyhow

YOUNG: Maas Brothers?

CHRISTOPHER:
Yeah. I got that pair of pants, and I didn't attempt to get

anything else. I was getting my ass out of there. All right. I've been in the Penitentiary three times. This last time I got violent, and they got me for assault to commit first degree murder, okay. I'm gone, done planned to leave anyhow, both of them are dead, I didn't get no pulse off of them, I know they got to be dead, all right. I went and picked my daughter up at school, I signed her out, we left, that girl didn't know anything about this until I told her in Carlisle, Arkansas, and she didn't believe me, she didn't believe me until Pat called the other day and told my mother on the phone, my mother liked to fell on the floor, you know, screaming and hollering, and that girl didn't believe that until then.

YOUNG: After -- you say you felt for Bootsie's neck for her pulse, and Charlie's arm?

CHRISTOPHER:
I felt for here and I felt for her wrists.

YOUNG: Where did you check Charlie at?

CHRISTOPHER:
His neck and I checked his wrists too.

MILLS: Where was he?

CHRISTOPHER:
He was over between the floor and the sliding doors.

YOUNG: You checked his throat for a pulse and you didn't get any? Okay. Go ahead.

CHRISTOPHER:
We left.

YOUNG: You and a --

CHRISTOPHER:
Right, she didn't know anything about it.

YOUNG: You picked her up some place then?

CHRISTOPHER:
I picked her up at Lely High School.

YOUNG: Did you then go anywhere else in Naples after you picked her up?

CHRISTOPHER:
Ah, yeah. I stopped at the service station at a, across from the Buccaneer Inn, 'cause they had a tire down that they'd fixed for me, I picked my tire up, 'cause I knew I was subject to have a flat, and I didn't -- I had my jack but I didn't have, you know, the lug wrench or anything, to jack it up with, and I stopped at the place the other side of Citizens Bank, K-Mart, and tried to get a lug wrench there, and they didn't have one, so I had to stop in Ft. Myers, I went on from there to Ft. Myers.

YOUNG: When you were talking about the bank you said Charlie got $300 out of the bank, is that

correct? Now you may have told me -- what did he do with the money?

CHRISTOPHER:
He gave it to me.

YOUNG: Oh, he gave it to you, you may have answered that.

CHRISTOPHER:
Yeah. He handed it to me right there.

YOUNG: Was this just a loan or how were you to pay that back?

CHRISTOPHER:
Like he told me, he said you pay it back when and how you can.

YOUNG: You and Charlie got along all right, I assume?

CHRISTOPHER:
Yeah. We got along real good. Every time him and Boots would get into it, I'd go up to his trailer or up to this place where he'd drink beer and everything, in Bonita Springs, and I'd talk to him, and I'd get him to come back to the house, you know. I can prove this by several people.

YOUNG: Oh, I'm not disputing your word, we've got two dead people we're trying to investigate.

CHRISTOPHER:
I know that. And I know that I'm the prime number one suspect, and I'm just telling you I didn't kill anyone.

MILLS: Bill, what did you tell Norma?

CHRISTOPHER:

Listen, I didn't know how to tell that kid. I mean, this is her foster mother, she loved her, you know. I tried for, I don't know, four or five days you know, to figure out how I was going to tell her about it, and hell, every time I tried to talk to her, I couldn't do it. So I just set her down one night, you know, and I'd been cutting the news off, you know, to keep her from seeing it, you know, and I thought maybe, I didn't want her to see it that way, just right on the news cast, you know. So I told her, Norma, I got to talk to ya, I got something I got to tell ya, and I said I don't think you're going to like it, you're not going to believe me, and I said, I got something to tell ya, and I told her.

MILLS: What'd you tell her?

CHRISTOPHER:

What I told ya all.

MILLS: Did you tell her how you got the money?

CHRISTOPHER:

She knew when I was getting the money from Charlie.

MILLS: When you got that money, you had it when you left Naples?

CHRISTOPHER:

Right.

MILLS: What did you do with it?

CHRISTOPHER:
Give it to her.

MILLS: What did you tell her about it when you gave it to her?

CHRISTOPHER:
I told her it was money I got from Charlie.

MILLS: Okay.

CHRISTOPHER:
I had about $40 outside of that left of the money that he had already, you know, I had some from him buying that gun from me, he give me three $20 bills for the pistol. That was three days or four days.

MILLS: Did you explain anything else to her? How did you tell her that you got out of the house with the bags?

CHRISTOPHER:
She knew that they had to go to this Meals on Wheels thing, I just told her I had to wait for the opportune time to take them out, because I knew, you know, if I took them out in front of Boots and them, she was going to raise hell asking what are you doing taking all those clothes out of here.

MILLS: In other words, you told her that everything was okay then. Between Boots, and your self and Charlie?

CHRISTOPHER:
Yeah.

MILLS: There was no problem that morning when you left?

CHRISTOPHER:
Right.

MILLS: You say when you left that morning when you came back, one time you said you had a cup of coffee with Boots --

CHRISTOPHER:
Yeah, that's after I carried Norma to school, and uh, I stopped and picked up a pack of cigarettes at the 7-11.

YOUNG: Then you left again to go somewhere else?

CHRISTOPHER:
I went down to that site, the construction site.

YOUNG: Then you came back? One more time around 10:00? And Boots wasn't there?

CHRISTOPHER:
I didn't see her now.

YOUNG: Was the car there?

CHRISTOPHER:
Uh -- the first time that I came back the car wasn't there. Wait a minute. The first time I came back, I had coffee with her, the second time I came back, --. No, her car wasn't there.

YOUNG: It wasn't there the second time either?

CHRISTOPHER:
The second time when I came back her car wasn't there.

YOUNG: Do you know where she was at?

CHRISTOPHER:
No, I don't have no idea. I know what I --

YOUNG: That's when you and Charlie went to the bank, right?

CHRISTOPHER:
Right.

YOUNG: Okay. Did you drive to the bank?

CHRISTOPHER:
Yeah.

YOUNG: Was there anybody else in the neighborhood there you saw that day?

CHRISTOPHER:
The lady next door.

YOUNG: Did you talk to her?

CHRISTOPHER:
I just spoke to her, you know.

YOUNG: Was she out around the building or anything when you was just running in and out? You and Charlie?

CHRISTOPHER:
I saw her a couple times, she was doing her wash, you know, we got

a washer and dryer back there, and Norma babysat for her son, I mean with her son.

YOUNG: Right.

MILLS: Uh, Bill. When did you first go to Naples, this is ah. Okay now. She's your daughter?

CHRISTOPHER:
Right.

MILLS: When did you first meet her. I understand there was a period of time when you never saw her?

CHRISTOPHER:
Fourteen years, twelve years, I know, I never saw her, because she was given up when I was at the funny farm in 1962.

MILLS: And when was the first time you saw her?

CHRISTOPHER:
Ah, 1975.

MILLS: Where was that?

CHRISTOPHER:
She came up to visit with, ah, with her natural mother, Pat Stock in '75, and Pat called me on the phone, and asked me if I'd like to meet my daughter, and I said, naturally I'd like to meet my daughter, and I said, naturally I'd like to see her, you know, so Pat brought her over, you know, and I got to take her swimming several times, you know, we went to the show and all that kind of stuff.

MILLS: Now you and Pat Stock were never married?

CHRISTOPHER:
Never were.

MILLS: But in '75, I guess the summer, the summer of '75 you met?

CHRISTOPHER:
Right.

MILLS: After that, when was the next time you saw her?

CHRISTOPHER:
This year.

MILLS: This is '77, did you skip a year?

CHRISTOPHER:
Yeap. She wasn't up here in '76, it's been a period of about two years, close to it that I --

MILLS: She came back up here this summer and you saw her again?

CHRISTOPHER:
Yeah. She stayed about five weeks this time.

MILLS: Did you go back down with her?

CHRISTOPHER:
No.

MILLS: What happened there, how'd that come about?

CHRISTOPHER:
Gene Carrington and I were more or less, you know, buddying around with each other and ah, we

had a trailer that was left in Tennessee, and we moved it, or started to move it this particular day when I left, ah, I don't remember what date it was.

MILLS: She had already went back?

CHRISTOPHER:
Yes. She'd been back two or three weeks.

MILLS: Okay. You and this fellow with the trailer, you were going to move the trailer?

CHRISTOPHER:
Yeah. We were to move the trailer down to Con---, Miss. And we went down to rent a place in Con--, Mississippi, on the lake down there, and he was going to pull his trailer down there. So, we had it hooked up to his Ranchero he had, an El Ranchero, we had it hooked up to it, the electric brakes hung up on it, and tore the whole inside of the wheel right out, the lug, I never seen one do like that before. I mean, it just tore the whole thing there, and like to lost the trailer, like to turned over. So I came back to Memphis and uh, went out to his Mom and Dad's, and picked up $200 from them, and I went by my mother's, and I'd already been planning on going down there anyhow, you know, because the way that she lived, there was a lot of conflict when she left anyway, between me and her mother, Pat. And Pat said she never was going to let me see

her again when she come up here, and all kinds of crap, you know. So, ah, that's the day that I left, I don't know exactly what day it was, I imagine you can check with ah, ah, ---- aunt, in Atlanta, for the date, because I remember spending the night there, before going on.

MILLS: This -- what kind of car did you go down in?

CHRISTOPHER:
'73 Pontiac.

MILLS: And whose was that?

CHRISTOPHER:
Ah -- I was in the process of paying for it, ah, to Gene Carrington.

MILLS: In other words, it was your car, and you were buying it?

CHRISTOPHER:
Well, I didn't have the title to it, you know.

MILLS: But there was an agreement between --

CHRISTOPHER:
That's right, there was an agreement between us. And, ah, I understand later that he had a warrant put out on the car. His mother did or his step-son or something -- but ah, I talked to him last night, and ah, I found out about it.

MILLS: Okay. When you left here, you

took this gun with you?

CHRISTOPHER:
Yeah.

MILLS: Where had you got that gun?

CHRISTOPHER:
From him.

MILLS: Same guy you got the car from?

CHRISTOPHER:
His wife's gun.

YOUNG: Bill, when you, when you found that gun, you said it was laying on the bed, did you check it?

CHRISTOPHER:
You mean to see if it had been fired?

YOUNG: Yeah.

CHRISTOPHER:
Yeah. It had two empty -- shells in it.

YOUNG: How many did you hear?

CHRISTOPHER:
I didn't hear but one shot.

YOUNG: Where'd you get those bullets you had in your pocket last night?

CHRISTOPHER:
They were in the glove compartment of the car.

YOUNG: In what car?

CHRISTOPHER:
The Pontiac.

YOUNG: You mean, you'd been carrying them since you ditched the car?

CHRISTOPHER:
Well, I had the gun in there, you know, the gun, and I think it was a couple old steel jacketed 32 shells, and an old lead 32.

YOUNG: You heard one shot -- you only heard one shot?

CHRISTOPHER:
Yeah. I only heard one shot.

YOUNG: And that had to been the one that killed Charlie, right?

CHRISTOPHER:
Right.

YOUNG: Did Charlie ever speak or anything. Did you say he was on the bed quivering?

CHRISTOPHER:
Na. He never said nothing.

YOUNG: Never said a word? How long were you in that living room? Did you go to the bathroom before you checked Charlie? I mean, how much time would you say elapsed by the time you heard the shot and you went in there?

CHRISTOPHER:
Less than a minute, 20, 30 seconds, I guess. You know I heard the shot.

YOUNG: You say you called his name a couple of times?

CHRISTOPHER:
Yeah. I went to the door, and I said Charlie. I knocked on the door, you know, Charlie? I opened the door and when I did he kind of had his back to me, he was on his side, and his legs was jerking, and then he fell over on the floor.

YOUNG: He didn't fall on his face or anything?

CHRISTOPHER:
He was laying kind of, you know, like this on the floor --

YOUNG: On his side?

CHRISTOPHER:
-- yeah. 'Cause when I raised him up, you know, felt for his throat, I felt for his wrist first, then I felt for his throat, and I seen that blood, it looked like it was coming even from this side of his head, right in through here.

MILLS: Which wrist did you feel?

CHRISTOPHER:
The one that was laying up here, it had to be the left wrist.

YOUNG: Was he bleeding? Then, when you, was he still bleeding?

CHRISTOPHER:
Head, just had blood coming out of his head.

MILLS: There was a flow of blood coming, what then?

CHRISTOPHER:
You know, there wasn't a large amount of blood or anything, I mean, blood was just, I guess maybe where he hit the floor, the bed or whatever, you know, he had blood all over this side of his head.

YOUNG: How was he dressed?

CHRISTOPHER:
Ah, god, he had shorts on, I know that. I don't believe he had no shirt on.

MILLS: Anything else about his dress?

CHRISTOPHER:
No response.

YOUNG: Did he have shoes?

CHRISTOPHER:
Had had lost one pair of shoes, uh, fishing. I think he had a pair of, kind of like canvas slip on shoes. I believe that's what he had on when we went to the bank.

MILLS: How was Bertha dressed?

CHRISTOPHER:
No response.

MILLS: You had coffee with her there earlier?

CHRISTOPHER:
Yeah.

MILLS: How was she dressed?

CHRISTOPHER:
She had a pair of shorts on, and I think it was a printed top, I -- man, I'm not really sure.

YOUNG: When you brought that, Charlie back from the bank, where did you park Bertha's car?

CHRISTOPHER:
Right in the middle of ours.

YOUNG: Where?

CHRISTOPHER:
His car was parked here, and I was parked over here, and I parked her's right in the middle.

YOUNG: Between yours and his?

CHRISTOPHER:
Yeah.

YOUNG: Okay.

MILLS: And you say Bertha's car and his car, what kind of car was his?

CHRISTOPHER:
It's like a little old Volks--- I tell ya, it's a Vega, a little blue Vega, it's the only one I've ever seen that had the, you know, instead of having the back side windows in it, it was completely paneled in.

MILLS: Okay. What was hers?

CHRISTOPHER:
Uh, Maverick. Dark brown, it had

a green bottom and a black top. I don't know what year it was.

MILLS: Was that the first time you'd ever driven her car?

CHRISTOPHER:
No, I drove it several times. I've had to drive her home drunk, you know, from uh, whatever place up in Bonita Springs. Seminole.

MILLS: When you had coffee with her that morning, how was she dressed?

CHRISTO HER:
If I'm not -- I could be mistaken I can't swear to this, but I believe she had on a pair of black shorts, printed top. I'm not positive, I couldn't be. But I know she wore shorts quite a bit, I know she was working for Upjohn, she had a white uniform, that she wore, you know, it was a nurse's aide, then this other job that she had at the condominium, uh, she just, you know, wore shorts over there, or slip on a dress.

YOUNG: In that period of time, when do you think Bertha came back home? You know, it was -- it was, you're only talking about an hour there that she was gone, she could have been. She was gone the first time you were there. And then when you came back with Charlie from the bank, is that right?

CHRISTOPHER:
The first time I came back, I had

coffee with her.

YOUNG: Yeah, I know. I'm talking about the time you went to the bank, and you said Bertha was gone, and then when you came back you went to get some more beer, am I correct in saying that? Charlie, when --

CHRISTOPHER:
When we come back from the bank yeah. I went got a six pack.

YOUNG: So, you assume that Bertha was at the house at that time, or she come back while you were gone?

CHRISTOPHER:
I just assumed she was there, you know, her car was there.

YOUNG: Okay, but do you know she was? Her car was there when you came back from the bank?

CHRISTOPHER:
Yeah.

YOUNG: Okay.

CHRISTOPHER:
It wasn't there when me and Charlie left to go to the -- to the bank. I know it wasn't there.

YOUNG: Okay. Now on these travels, you did -- you left Naples and did you stop anywhere in between there and Atlanta, or, yeah, you stopped in Atlanta one time, right?

CHRISTOPHER:
I got a ticket right outside of, I don't even know where this was, I got two tickets rather.

MILLS: Is this going or coming?

CHRISTOPHER:
Going. Hell, I was doing 77 miles an hour, and then, uh, I got one for no driver's license.

YOUNG: Is this in Ft. Myers, you say?

CHRISTOPHER:
It was after there, you know.

YOUNG: Who -- who stopped you there? Highway patrol?

CHRISTOPHER:
Highway patrol.

MILLS: Sheriff's department? Are you sure it's highway patrol?

CHRISTOPHER:
I believe it was highway patrol.

YOUNG: You got a copy of those tickets?

CHRISTOPHER:
Sure don't.

YOUNG: What happened to them, do you know?

CHRISTOPHER:
I threw them away.

YOUNG: Threw them away?

CHRISTOPHER:
Yeah, I'm leaving Florida, I

ain't paying them damn things, no way.

MILLS: I'm a little bit mixed up, clear -- clear this up for me.

CHRISTOPHER:
All right.

MILLS: I take it you got -- did you get those when you were going down or when you were coming back?

CHRISTOPHER:
Yeah. When me and Norma was leaving Florida.

MILLS: Oh.

CHRISTO HER:
Coming back from Memphis.

MILLS: Okay. When you picked Norma up from school, before school is dismissed, you said, you signed her out or something. Okay. What time was it when you picked her up?

CHRISTOPHER:
It had to be around 12:00. She was in lunch when I got there.

MILLS: And then you -- you left then?

CHRISTOPHER:
That is right.

MILLS: How far did you get that night. Did you drive all night?

CHRISTOPHER:
I want to say that we drove all the way to Atlanta, but me and

her was arguing about that the other day you know, when we was talking to her mother about it. And she said that we stopped at some motel before we got to Atlanta. But I don't believe so. I believe the first time that we stopped, you know, spent the night, uh, was in Atlanta.

MILLS: Let me ask you this. I'm kind of undecided whether to raise the question. Had you been drinking a lot?

CHRISTOPHER:
What driving?

MILLS: No, after you left there, had you been drinking?

CHRISTOPHER:
Yeah, I drank a few beers, you know.

MILLS: You told us you got up that morning, I can assume, I guess, that you were sober when you got up that morning?

CHRISTOPHER:
Sure.

MILLS: You took Norma to school, you hadn't had anything to drink at that time?

CHRISTOPHER:
No. Huh-uh.

MILLS: Ah -- you come back you drink a cup of coffee, and ah, you got -- you drink what? Two beers?

CHRISTOPHER:
Yeah.

MILLS: Before you picked her up from school --

CHRISTOPHER:
Two beers.

MILLS: Do you think it was any more than that?

CHRISTOPHER:
Well, I drank one beer with Charlie.

MILLS: One with Charlie?

CHRISTOPHER:
Yeah. And I drank a beer walking. Ah, well, I got those two beers from the 7-11 for myself, I drank those, and when I got the six pack I drank one on the way back to the house. When I went in the house I give him one of the Budweisers, then I opened another for myself then.

MILLS: Did you drink it?

CHRISTOPHER:
I -- I'm not sure if I drank that one or not. Nah, I'm really not because after the gun shot I went back there and seen both of them, you know, I know I got, I think it was three beers left in the six pack I got that, plus the suitcases and went on to the car.

MILLS: Did you have blood on you?

CHRISTOPHER:
Yeah, I had it all over my hands.

MILLS: What did you do about that?

CHRISTOPHER:
I washed it off in the sink.

MILLS: What sink did you wash it in?

CHRISTOPHER:
Norma's bathroom, the one in the house.

MILLS: Did you get any other blood on you?

CHRISTOPHER:
Nah.

MILLS: I'm figuring then you had four beers, at the most when you picked Norma up from school?

CHRISTOPHER:
That's about right.

MILLS: Had you taken anything, any kind of pills or anything?

CHRISTOPHER:
No, sir. Sure as hell hadn't.

MILLS: You hadn't taken any of that --

CHRISTOPHER:
No kind of pills.

MILLS: How about the day before, had you taken anything?

CHRISTOPHER:
No.

MILLS: Had you smoked any marijuana?

CHRISTOPHER:
No.

MILLS: In other words, what you're saying, what you're telling me then is your head was on straight?

CHRISTOPHER:
I think so.

MILLS: You had no problems. And then you drove and you got stopped by an officer up somewhere around Ft. Myers. It must not have been messed up because he didn't charge you with any drunk driving or anything?

CHRISTOPHER:
No. That kind of surprised me too, because I was drinking beer when he stopped me.

MILLS: Obviously, you wasn't intoxicated because he didn't.

CHRISTOPHER:
No. I sat in the front seat with him, and ah, he was trying to get a check from Shrevesport, Louisiana, on my license, see I'd lost my license, and I had my driver's license number written down, and he was trying to get verification on that, and ah, he called Tennessee to see if they had any warrants on me, and checked the car out, you know, and asked me who the car was registered to, and I told him Gene Carrington, and he wrote

this down on the ticket, you know, and he told me that if I could prove by letter or ah, a notified letter that ah, I had a valid driver's license, they would dismiss that one. Throw it away, but they would still get me for $25 for the speeding ticket. So he give me two tickets.

MILLS: Did you ever get a ticket in Bertha's car? While you were driving Bertha's car?

CHRISTOPHER:
No. Huh-uh.

YOUNG: When you parked that car, Bertha's car, that's the Maverick what ---- heard, right?

CHRISTOPHER:
Right.

YOUNG: Did -- did you lock it up, or did George lock it up, when you came back from the bank, or do you recall if anybody lock it up?

CHRISTOPHER:
I don't -- I remember asked him if he wanted me to lock it up. And when I --

YOUNG: Who had the keys?

CHRISTOPHER:
I did.

YOUNG: What did you do with those?

CHRISTOPHER:
I'm not sure if I give the keys

to Charlie, or when I went in I laid them down on the table or what, I'm not -- I'm sorry, you know, I wasn't even thinking, you know --

YOUNG: You don't remember whether the car was locked up or not?

CHRISTOPHER:
No, I really don't. I know that she kept her car locked. He never kept his locked at all, you know, I mean, there wasn't nothing in there for nobody to take no way.

YOUNG: What time does Lely High School take in?

CHRISTOPHER:
What time does it take in? I think classes start, nah, I'm not positive about this either, because I don't go to the damn school, you know, I just know that she went there and she said that it takes up at fifteen to 8:00, like she always likes to get there early because her and her friends smoke cigarettes or something before they go in, you know.

MILLS: You say -- you took her over at 7:10?

CHRISTOPHER:
Well, that's the time I left the house, about ten after 7:00 approximately.

MILLS: Okay. You came from there, let me get this straight in my mind,

from there back to the house, or did you stop anywhere --

CHRISTOPHER:
No, I stopped at the 7-11 for a pack of cigarettes.

MILLS: Stopped at the 7-11. Then you went from there on to the house?

CHRISTOPHER:
Right.

MILLS: Okay. Bertha was up?

CHRISTOPHER:
I had a cup of coffee with her.

MILLS: Was she up when you left the house?

CHRISTOPHER:
Yeah. Charlie wasn't up when I left --

MILLS: Charlie wasn't up. She was up when you left the house to take the girl to school?

CHRISTOPHER:
Boots was up every morning.

MILLS: Okay. And then you go back, and you and Boots have a cup of coffee? And you left the house again. What was the purpose of your trip that time?

CHRISTOPHER:
To go down to see if those guys had started working back behind there. See, Boots and them thought that I still had the job with --

MILLS: Yeah.

CHRISTOPHER:
-- but I never did have the job with them.

YOUNG: You never did work?

CHRISTOPHER:
No. I never did work for them.

MILLS: Okay. You went down there, and ah, before you left the house that time, had George got up?

CHRISTOPHER:
I don't think so.

MILLS: But that's when Boots got the telephone call?

CHRISTOPHER:
Yeah, they did. Yeah he was up too, because she'd gotten that telephone call, and ah, ah, yeah, because that's when the argument, a few words --

MILLS: So you left and went down --

CHRISTOPHER:
Right back behind the Glades.

MILLS: Okay. You stayed down there and talked to these guys?

CHRISTOPHER:
Nah, there wasn't but one guy down there, he said the rest of them would be there in a little while, you know.

MILLS: Okay. What -- what did you do then from that?

CHRISTOPHER:
I went to the store and got a couple beers at the 7-11.

MILLS: You got two beers?

CHRISTOPHER:
Uh-huh.

MILLS: Okay. What did you do then?

CHRISTOPHER:
I -- when I came back the, that's when Boots was mad. Her car wasn't there. The second time yellin'. I come back with the two beers, you know, that's when I drank the beer with Charlie, he had Old Milwaukee.

MILLS: You and Charlie sat in there and drank two beers?

CHRISTOPHER:
Yeah. I drank a beer with him out in the front.

MILLS: What? Out in the front?

CHRISTOPHER:
Yeah. In his car.

MILLS: In other words, you didn't go back in the house?

CHRISTOPHER:
Yeah, I went back in the house.

MILLS: What did he say about the argument that they'd had?

CHRISTOPHER:
He said nothing about it to me, not that day.

MILLS: Like you sat around there and you and him drank the beers. What happened then?

CHRISTOPHER:

I left and went back, he told me, you know, as soon as Boots got back, that's when we'd go to the bank. I left then and went back down to the construction site, and that's when all; the guys were down there then, and was talking to them. When I came back, Bootsie's car was there, I was wrong about that. Her car was there then, and that's when it had to be around 10:00 then, me and him left and went to the bank.

MILLS: How did ah, Norma take it when you told her about that?

CHRISTOPHER:

Like I said, she didn't believe me. I guess she thought I was joking with her or something.

MILLS: She just didn't believe that they were dead?

CHRISTOPHER:

Well, it just never registered on her, you know. It was like saying, you know, when your little cat got run over or something. I don't think it really registered on her till the other night when Pat called and her mother went all to pieces, you know, I think she fully realized then, that they were dead.

MILLS: But you -- you had told her about George giving you the money. But you hadn't told her anything about the deaths?

CHRISTOPHER:
How in the hell do you tell a fifteen year old kid that her foster mother and some old man's dead, you know.

MILLS: But then sooner or later you're going to have to tell her?

CHRISTOPHER:
I just tried to figure our the best way to tell her, you know, I did.

MILLS: Did you ah, explain to her why you didn't call the police?

CHRISTOPHER:
She knows that, she knows about me being in the Penitentiary. but she knows about that gun being there. She knew that I had it in my possession.

MILLS: Did she try to get you to call the police or anything?

CHRISTOPHER:
Nah.

MILLS: Where were you when you told her about it?

CHRISTOPHER:
Carlisle, Arkansas.

MILLS: At whose house?

CHRISTOPHER:
Was in a motel.

MILLS: Was that in Carlisle?

CHRISTOPHER:
Yeah. The motor burn up on the car.

MILLS: In the Pontiac?

CHRISTOPHER:
Yeah. I had to get it towed in and all that.

MILLS: To the motel?

CHRISTOPHER:
Garage right across the road from the motel.

MILLS: Did you get your car fixed?

CHRISTOPHER:
No. It burned up man. ----- let Gene worry about it.

MILLS: What -- what did you do with the car?

CHRISTOPHER:
I -- sold it. Junked it.

MILLS: You sold it to the man in the garage across the street or --

CHRISTOPHER:
No. From a garage down in Carlisle, he come out and looked at it, and asked me what I wanted for it, and I told him I'd take any damn thing he'd give me for it. He give me $85.

YOUNG: Did he give you any kind of bill of sale or title?

CHRISTOPHER:
Yeah. In a bogus name though.

MILLS: Did you sign somebody's name to that title?

CHRISTOPHER:
Yeah. Well there was no title to it, you know.

MILLS: What kind of name did you put on it?

CHRISTOPHER:
James --

MILLS: Pardon?

CHRISTOPHER:
James Tignor.

MILLS: Is that the name you was registered under at the motel?

CHRISTOPHER:
Yeah.

MILLS: Bill, you know, Harold and I have been working on this since day one. And -- there's not, not a whole lot about the total situation that we don't know. Just let me say this. This is your situation, this is your ball game. You're old enough, I don't have to tell you how to play it, you play it how you want to, you know how I will play it.

CHRISTOPHER:

Well, I'm going to say this. I know you're all going to try to burn me, you know.

MILLS: I'm going to stick to the facts.

CHRISTOPHER:

Okay. Then I'm sticking to the facts. I never pulled a trigger on nobody in my life, buddy. Never.

MILLS: Bill, if that's the case, I can't understand why you're telling us what you're telling us.

CHRISTOPHER:

I don't understand what you mean by that.

MILLS: I mean, what you're telling us, it's just not true.

CHRISTOPHER:

Like you say, we're both playing a ball game.

MILLS: I'm not playing a game.

CHRISTOPHER:

I'm not either.

MILLS: I'm speaking to the facts.

CHRISTOPHER:

Okay. Okay. Fact one, did I or did I not kill one or both of these people, I mean, I've been charged with killing uh, uh, with Charlie's, right?

MILLS: Right.

CHRISTOPHER:
Okay. Am I charged with killing Bertha, too? I didn't do it, that's all I can tell you, you know.

MILLS: You didn't kill Charlie or you didn't kill Bertha?

CHRISTOPHER:
I didn't kill neither one of them.

MILLS: I'm not going to lie to you, Bill.

CHRISTOPHER:
Okay.

MILLS: You--say you didn't. Play it however you want to. The facts are the facts, they speak for themselves, ah, you can tell it any way you want to or I can go in and tell it any way I want to. But the fact is the fact, and we can't change it. Now, this is -- this is bad, this is heavy, that's the truth. But still it happened. You can't change it. We're not going to change it, we're going to play it just like it is. Now there's a young girl that's all caught up in this thing, real tight.

CHRISTOPHER:
Listen, the run down to ----- had nothing to do with anything.

MILLS: I told you to start with what your daughter was charged with.

CHRISTOPHER:
A runaway.

MILLS: Yeap.

CHRISTOPHER:
Okay. She had got nothing to do with this. This girl didn't even know anything about it until I told her. She didn't really believe it man.

YOUNG: Bill, you've got a whole bunch of people drawn into this thing, your whole family.

CHRISTOPHER:
What, what, man, they ain't been in Florida, they had got nothing to do with it.

MILLS: They may not have been in Florida, Bill, but you got them involved after you got up here. Now as far as the girl goes, I don't, I don't really want to drag her into this thing, and if she's not involved in it, she's definitely not going to be charged. However, that don't keep her out of the situation --

CHRISTOPHER:
I don't understand.

MILLS: -- you know that?

CHRISTOPHER:
I don't understand that.

MILLS: That she's your daughter --

CHRISTOPHER:
I don't see how she can be

involved in it --

MILLS: -- that don't keep her out of the situation. You know that --

CHRISTOPHER:
I don't understand.

MILLS: -- now she's your daughter.

CHRISTOPHER:
I don't see how she can be involved --

MILLS: -- Now she's been though a lot, I don't know whether she want to do it --, but we're going to stick to the facts, one way or another, now, we asked you to tell us in your own words what took place, you know, we want to hear it from you, we can hear it from anybody, all --

CHRISTOPHER:
I just told you.

MILLS: We want to hear it from you. But ah, we start striking out what you told us against the facts, something different.

CHRISTOPHER:
I don't understand what the hell you're saying. Really.

MILLS: What I'm saying is that you're not telling it right. That's what I'm saying. And the reason I say that is because I was there. Harold was there. And we've analyzed this thing through and through, and we sit here and talk with you, and you tell us

this, and Bill, it's just simply not true.

CHRISTOPHER:
Well, I guess I'm a damn liar, then.

MILLS: I didn't say that, all I'm saying is that what you're telling us don't match up with the facts now. You explain that to me?

CHRISTOPHER:
I know. I think you want me to tell you something else, and I don't know what you want me to tell you. And I'm just telling you what I did that morning, to the best of my knowledge. You know, hell, that what, a month ago.

MILLS: Uh-huh.

CHRISTOPHER:
Right at it.

MILLS: Bill, there's not one part of that morning that would escape your mind. Not one little part of that morning that would escape your mind. You know every minor detail of what happened that morning. Just like it just happened. So it being a month ago, don't make any difference. Four years from now, you can tell me every little detail that happened that morning. It's not going to make any difference.

CHRISTOPHER:
I tell you what happened to the best of my knowledge.

MILLS: Don't, don't tell me about the best of your knowledge or lapse of memories suggest --

CHRISTOPHER:
I had no lapse of memory, I'm just telling you what I know.

MILLS: All right. We know, that you know why, it's clear to you it's in your mind. Ah -- I can't ah, ignore certain facts, and believe something that I know is not true. Would you?

CHRISTOPHER:
I'd have to be, I'd have to be in your shoes to say that. What do you want me to say? I killed him?

MILLS: Bill, I don't really care what you say. To be real --

CHRISTOPHER:
Okay.

MILLS: ... to be real honest with you. But I'm --

CHRISTOPHER:
Why go through this then?

MILLS: But I'm not going to sit here and tell you, ah, when you tell me something, I'm not going to say, "Okay. That's it, and indicated to you that I believe you. I don't buy it.

CHRISTOPHER:
Okay. Then you think I'm telling a lie?

MILLS: Right. What you're telling me don't match up with the facts.

CHRISTOPHER:
Well, I'm sorry.

MILLS: It's no problem to me.

CHRISTOPHER:
I understand that.

MILLS: It don't present any problem to me at all, but ah, it might present some problems to you. So, ah, there is a different way that this thing happened, you know it and I know it, Norma knows it. I don't know how much you care about her.

CHRISTOPHER:
What in the hell has she got to do with it. What -- what are you -- are you trying to use her against me or something like that?

YOUNG: No. You used Norma, we haven't.

CHRISTOPHER:
No, --

MILLS: No, no you used her from down there -- and brought her up --

CHRISTOPHER:
That's right. And she wanted to go, I'm her father, man, you know, I never give that girl up. She wanted to go with me.

MILLS: Did she want that thing to happened that happened down

there?

CHRISTOPHER:
Well, hell no, she didn't want it to happen. How could she. There wasn't anybody wanted a thing like that to happen. If they're in their right mind.

YOUNG: Did you ever have any grudges against Charlie at any time?

CHRISTOPHER:
I just met the guy when I got down, I couldn't have known him more than three weeks.

YOUNG: Have you ever heard anybody tell you that Charlie or Norma or anybody ever tell you that he had made passes at her?

CHRISTOPHER:
Yeah. I've heard that from people up here in Memphis. He even pulled the blanket up on her, you know, while I was down there. I said something to him. What am I going to do? Hit an old fifty, some odd year old man? He's sick, or shoot him? That's really something to shoot somebody over though, isn't it?

YOUNG: Well, that is why we're trying to find out why he was shot.

CHRISTOPHER:
My god. No. I didn't shoot him, nor I never shot Bertha.

YOUNG: That's the real corker, I can't understand why you killed this elderly lady, I mean I can

understand you might be --

CHRISTOPHER:
Well, save --

YOUNG: Now wait a minute. Yea, I accused you for we signed a warrant against you.

CHRISTOPHER:
Okay.

YOUNG: Ah --

CHRISTOPHER:
Then I got nothing else to say. If you're accusing me of murder, then, take me down there.

YOUNG: You were accused when you came in here. You knew you were accused --

CHRISTOPHER:
That's right. That's right.

MILLS: -- you knew what you were accused of, and I told you what the girl was accused of, so don't make out like you don't know what you're accused of.

CHRISTOPHER:
Oh, Ah, -- I know what I'm accused of. I know that I'm accused of both murders.

MILLS: I told you awhile ago you were being charged with both murders.

CHRISTOPHER:
Okay, then, I got nothing else to say.

YOUNG: You mean it's all right, as long as we accuse you of one?

MILLS: But, all of a sudden when you're accused of two, you don't --

CHRISTOPHER:
I'm not saying that, I know that, didn't I tell you awhile ago that I knew that ya, I was accused of both murders?

YOUNG: Yeah. You -- you should know.

CHRISTOPHER:
Okay, then. What's the need of me saying anything then.

MILLS: What are you upset about?

CHRISTOPHER:
You ask me? I'm upset about the fact that you're bringing my daughter up here like I'm using her in this thing.

YOUNG: I'm asking you --

MILLS: I'm asking you to explain her actions in this thing?

CHRISTOPHER:
Her actions. Her actions in what? I don't see where she's done anything.

MILLS: She left home down there. She came up here with you. She hid out with you.

CHRISTOPHER:
Why? Because she loves me, she wants to be with me.

MILLS: Is that the total thing, or is that the only reason that she would hide out, and not ah, call her people?

CHRISTOPHER:
She tried to call them.

MILLS: Are you talking about Pat or are you talking about Bertha?

CHRISTOPHER:
I'm talking about Boots. I'm talking about she called a friend of hers down there, to have him to try to check on Boots.

MILLS: When did she do all this?

CHRISTOPHER:
Exactly what day, you'll have to ask her about that, I don't know. But I know that she did call. And I know that Pat hadn't done anything but accuse her of killing and everything else, you know, since she's been with me.

YOUNG: How do you know Pat was accusing you?

CHRISTOPHER:
Huh?

YOUNG: How you -- who you talking about, Pat Stock?

CHRISTOPHER:
Pat Stock.

YOUNG: How do you know she's been accusing you?

CHRISTOPHER:
I talked to her. She's talked to

my mother every day. My mother's been telling me what all's been going on, you know.

MILLS: Did you tell your mother what happened down there?

CHRISTOPHER:
Yeah.

YOUNG: They believe you?

CHRISTOPHER:
I don't know.

YOUNG: Did your mother ever accuse you of killing them?

CHRISTOPHER:
Yeah.

YOUNG: Why would she do that? She knows you better than I do.

CHRISTOPHER:
She was hysterical when she got off the phone, she wouldn't even let Norma put her arms around her, you know. She called her a murderer. That's what Pat was saying on the phone, Bill and Norma killed Bootsie and Charlie, you know.

MILLS: Is that what she said?

CHRISTOPHER:
That's what my mother said she said. I don't know. I didn't hear her say nothing.

MILLS: Bill, I feel that anybody should have an opportunity to -- to explain things. Ah, the purpose

of talking with you, is not cause we need for you to tell us anything, the purpose is I just wanted to hear your version as to why.

CHRISTOPHER:
As to why what? I didn't tell anybody about it when I left from down there.

MILLS: As to why these people were killed?

CHRISTOPHER:
Tell me?

YOUNG: You were there, Bill.

CHRISTOPHER:
I was there when Charlie shot himself, or whatever. I wasn't there when Boots got killed, or whatever.

YOUNG: How could Charlie shoot himself three times?

CHRISTOPHER:
Three times?

YOUNG: Yes.

CHRISTOPHER:
If he shot himself three times, then I don't know.

YOUNG: Did you only hear one shot?

CHRISTOPHER:
That's all I did hear, one shot. I know that I took two empty bullets out of the gun.

YOUNG: What did you do with those?

CHRISTOPHER:
I threw them in the yard. Threw them in that little lake out there.

YOUNG: What did you do with the other four?

CHRISTOPHER:
Left in the gun.

MILLS: When did you do that?

CHRISTOPHER:
Right before I left.

MILLS: Where were the suitcases then?

CHRISTOPHER:
They were in Norma's room.

MILLS: You went outside and then came back in?

CHRISTOPHER:
No. What are you talking about, where were Norma's, no. Norma's suitcases were with me, I was going out the door when I threw them out there. And I shut the door and went on.

MILLS: In other words, you unloaded the gun before you went outside?

CHRISTOPHER:
Yeah.

MILLS: Okay. Let me see your shoes. Bill, are these the shoes that you had on that day?

CHRISTOPHER:
Yes, sir.

MILLS: Have they been washed since you left Florida?

CHRISTOPHER:
Yes, sir, they sure have.

MILLS: Where were they washed?

CHRISTOPHER:
Ah -- at the Holiday Inn, Memphis.

MILLS: We will issue you a receipt for these, we're gonna keep them here.

CHRISTOPHER:
You mean I just get to go bare foot again?

MILLS: Well, you're going to have to take care of that with the peoples who's keeping you now, as to what you wear, I've have no control over that.

CHRISTOPHER:
It has blood stains on them.

YOUNG: I see it. How'd they get there now?

CHRISTOPHER:
When I went into the bathroom where Boots was.

MILLS: I asked you earlier if you had any other blood on you other than your hands, and you told me no.

CHRISTOPHER:
Well, look, I'm just constantly telling lies, look, I ain't got

nothing to say at all, pete, why I ave, you know, and that's it. I ain't saying nothing else.

MILLS: Okay.

CHRISTOPHER:
That I'm charged with two murders, -- is all I can say.

MILLS: Okay, this brings us up to another point, which has nothing to do with what we're talking about. Ah, we're here from Florida and these warrants, these warrants are from Florida. Which you know you have to be extradited down there. That can come abut several different ways, you can sign on whether you want ---------- here. Ah, would you sign a waiver and go back?

CHRISTOPHER:
When are you all taking me back if I sign a waiver?

MILLS: When?

CHRISTOPHER:
Yeah.

MILLS: Ah -- possibly this week-end. These things take time, you know, even signing a waiver, I think there's a little legal mumble jumble here ---

CHRISTOPHER:
Right. If I don't sign, how long do I got before you all take me back?

MILLS: Well, we'll go ahead and initiate

the ah, the proceedings, and ah, everhow they progress well, as soon as the proceedings are over, then, we're going back down.

YOUNG: I can't say how long it will be, it might take a week, I don't know.

BOSWELL:
It's usually 30 to 60 days.

MILLS: Is that right?

CHRISTOPHER:
Can I ask one question?

MILLS: Sure.

CHRISTOPHER:
I mean, off with this thing too?

MILLS: Sure.

YOUNG: You want it turned off?

CHRISTOPHER:
Huh-uh. I don't care. I just, I just like to know -- (tape ends)

TAPE #2

Young: Today's date is September 9th, 1970 -- correction, September the 22nd, 1977. The time is 10:25 P.M. Location is ah, Memphis Police Department, Homicide Squad, Captain Tommy Smith's office. This will be a taped interview of WILLIAM D. CHRISTOPHER, white male, age 35. Present during this interview will be ah, Lt. Curtis Mills, Collier County Sheriff's Department, Sgt. J.C. Boswell, Homicide Squad, and Investigator Harold Young, Collier County Sheriff's Department. Bill, we're going to advise you of your rights once more, since you've talked to us you want to tell us about this thing, and you want it on tape, is that correct?

Christopher:
Right.

Young: Okay. You have the right to remain silent. You understand that?

Christopher:
Yes, sir.

Young: Anything you say, can and will be used against you in a court of law. You understand that?

Christopher:
Yes, sir.

Young: You have the right to talk to a lawyer and have him present with you while you are being

questioned. Do you understand that?

Christopher:
Yes, sir.

Young: If you can't afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish. Do you understand that?

Christopher:
Yes, sir.

Young: You can decide at any time to exercise these rights, and not answer any questions or make any statements. Do you understand that?

Christopher:
Yes, sir.

Young: Do you understand each of these rights I have explained to you?

Christopher:
Yes, sir.

Young: Having these rights in mind, do you wish to talk to us now?

Christopher:
Yes, sir.

Young: Bill, would you rather have an attorney here at this time?

Christopher:
No, sir.

Young: Okay. Are you going to give a statement on your own free will

without threat, promise?

Christopher:
Right.

Young: Okay. Would you go ahead and tell us, you talked to us off tape, you said you wanted to make a taped statement, rather than a written statement?

Christopher:
Right.

Young: This tape will be transcribed, and you can read it and sign it later, is that correct?

Christopher:
Right.

Young: Okay. Just in your own words, you want to go ahead and tell us what you told us a minute ago, in reference to this ah, --

Christopher:
Okay. Should I start from that morning?

Young: Just start from what led up to it, okay? I think that's all we need, isn't it? Okay.

Christopher:
Okay. Ah --

Young: Talk loud enough so we'll only have to do this once.

Christopher:
Ah -- when my daughter came to Memphis to visit with her mother here, ah, I got to know her

pretty good and during the time that I got, that I was with her, I found out about ah, George Ahern, and ah, her past step-father, Jim Skillen, putting their hands on her in ways that they shouldn't have, and ah --

Young: You go ahead and explain those ways, if you'd like.

Christopher:

Okay. And, ah -- my daughter'd asked me at one time that if, if I would move to Naples, you know, and get a job down there, you know, where I'd be closer by, and I told her that I'd think about it. And I did go down. And I don't remember the exact date, but I'm sure we can find out what the date is, but when I went to Naples, it took me about three or four days to find her, and ah, I was staying on the beach for about four days, and then Boots, ah, Mrs. Skillen, ah, invited me to her house for supper, and asked me if I'd like to stay there until I found a job, you know, and got on my feet, which I did. And ah, during the time that I was there, on three different occasions, ah, George Ahern had ah, pulled the covers up on my daughter, to check and see if she had any clothes on. Ah, he's put his hands on her breasts he's tried running his hands down between her legs, and I'd confronted Boots about it, which is Mrs. Skillen, that's her name. And ah, her and Charlie had but one argument about it

that I known of, but it's pretty evident that, you know, she wasn't going to jeopardize her security with him, to -- really do anything about it. So I confronted him about it at one time, and ah, we had an argument, ah, I was called a liar, and then when I had talked to my daughters' friends, ah, I'd found out that he had, ah, pulled the covers up on them too, you know, and tried molesting them, and nothing had been done. At the day of the killing, I should say three or four days before this happened, my daughter and I had already planned to leave Naples. Ah, George and ah, Bertha had been planning on moving to Miami or to Homestead or to Key West, one or the other. And ah, my daughter had packed all of her stuff up the night before this had taken place, which she has no knowledge of anything about, you know, the killings. The day that -- that this happened, I carried my daughter to school about ten minutes after 7:00. And ah, she was understanding that I'd pick her up between, you know, 10:00 or 12:00. Ah, I knew that George and ah, Bertha had to deliver some meals, what they call Meals on Wheels, there to the elderly people. So when I came back to the house, ah, I confronted Boots with ah, the situation again about Charlie and ah, you know, was told to get out of the damn house, that I was causing trouble between her and George. And ah,

she had threatened to call the police to me, because she knew that, that Norma was to leave with me. And during the period of the argument there, ah, I shot her once in the head. And I drug her body back to the bathroom, and shut the door and ah, approximately forty-five minutes or an hour later, Charlie returned and ah, I confronted him about the same problem, which I, I was mad, I was upset, was still scared about what I'd already done, and ah, he tried, you know, to fight me back, I slapped him down, ah, he run for the bedroom, and tried to shut the door, and I pushed the door to, and he backed up and sat down on the bed, and I shot one time at him and hit him in the head. I think [sic] took the pistol, two suitcases and my daughter's pants, and locked the door and I left and went to pick my daughter up from school. I didn't tell her anything about it. She had no knowledge of this until approximately ten days later, and ah, don't think she really believed anything that had happened until the phone call was made by her natural mother, Pat Stock here in Memphis to my mother. Ah, I know there's other details in here, but I think is basically what you all wanted.

Young: Yes. You said that your daughter didn't not have any knowledge of it ten days later. You did tell her a version of that, that which was, wasn't true, is that correct?

Christopher:

Right. I -- I had told her, well I had blood on, on my tennis shoes. I had asked, she had asked about that, and I had told her that Charlie and I had got into it, when I confronted him about him pulling the covers up on her and, and feeling her, and ah, she asked me what I did, and I told her that I'd hit him in his nose and, you know, the blood had, had gotten on my shoes. Which, that was what I had to tell her, because I couldn't tell her the truth. You know, I didn't want to.

Young: Bill, when Bertha was shot, would you put us at the scene and tell us how this happened. Where she was at, and where you were at?

Christopher:

She was in the process of trying to pick up the phone to call the police to me. You know.

Young: She was calling the police on you?

Christopher:

Well, she was going, that's what she had told me.

Mills: Which phone?

Christopher:

The phone that was in the kitchen.

Mills: When she fell then, which way did she fall?

Christopher:
She fell, her head was at the bottom of the refrigerator.

Young: How did you get her body to the bathroom?

Christopher:
I wrapped a blue blanket around her head, because she was bleeding so bad. And I grabbed her by her arms and drug her from the kitchen, back through the hallway, through the bedroom, head first into the bathroom and shut the door.

Young: You closed the door?

Christopher:
I closed the door.

Young: Did ah, then George came in, how, how much later was it?

Christopher:
Approximately forty-five minutes or an hour.

Young: Did you leave the house between the time that you shot Bertha, and the time that George came home?

Christopher:
Yes, we went to the bank.

Young: When you and George went to the bank, you had already shot Bertha?

Christopher:
That's Right.

Young: And you came back then, an argument pursued between you and him?

Christopher:
Right.

Mills: Ah, Bill, was there anybody else who came to the house during this period of time?

Christopher:
Yes, sir. There was a woman, ah, doing some type of surveying. Ah, I'm not really sure, I believe that she came -- I'm sure she came after I shot Charlie.

Mills: Before you got out of the house?

Christopher:
Before I got out of the house.

Mills: Okay. This girl, that you was telling us about, the friend of --

Christopher:
Beth McIntosh.

Mills: Was it Beth McIntosh that was telling you about, ah, George feeling her?

Christopher:
Right. And another friend, ah, her first name is Jill, you'd have to ask my daughter what her last name is, ah, she can confirm this too. There was the three of them that he'd done the same thing to all three of them.

Mills: Okay. Now, you said that you and

ah, George had went to the bank?

Christopher:
Right.

Mills: What was the purpose of going to the bank?

Christopher:
I'd asked him the day before to borrow money because he knew that I was going to leave that day, but he didn't have any idea that my daughter was going with me. And I believe ah, the real reason that he agreed to go to the bank with me, and to loan me the money was, you know, to get me out of the picture between him and Boots and whatever. But he did agree to help me, and said he'd do whatever he could to help me, you know. But when we went to the bank, instead of borrowing $200, he borrowed $300. Well, he'd never borrowed it, he draw'd it out of his account.

Mills: Checking or savings?

Christopher:
Checking account.

Mills: And that was the ah, which bank?

Christopher:
The Citizens bank of ah, Naples, is that what it is? Down town, across from the drivers license --

MILLS: Yeah, you're talking about the north trial.

CHRISTOPHER:
Greech, Greech Creek?

Young: Creech. Creech Road?

Christopher:
It's right in there.

Mills: So you and he went up there together?

Christopher:
Right. We went to a drive-in window, and ah, ah, made a withdrawal slip out for $300. And ah, he presented it to the woman, and she checked it out and she said they had a $300 hold ah, on the money that he had in the checking account. And I think this had something to do with the loan. I think he had borrowed a $100, or he withdrew a $1000 rather out of his savings account, or borrowed a $1000 is what I believe he'd done, and put in his checking account, because he has government checks of about $1200 a month coming in, and they all go to the bank. So, ah, in order for him to withdraw that money, that morning, ah, the bank manager, the man that he talked to, that I was present there with him, ah, told him that he would just put a hold on one of his checks, you know, to cover the $300, and go ahead and let him have the $300 now being that he needed it, and he told him that he was borrowing the money, to let me have for my trip back to Memphis and for whatever repairs I needed done to my car. So the

man went ahead and authorized the $300 withdrawal slip. We went down stairs, and he presented it to the teller, and she give him $300. He handed the money to me, and we went out and got back in the car, and went back to the house.

Young: You ah, I don't know whether we mentioned it earlier or not, what date was that?

Christopher:
August 31st.

Young: This year?

Christopher:
Right. Same date.

Young: What car did you go down to the bank in?

Christopher:
Ah, we used Bootsie's car. Bertha Skillen's.

YOUNG: Maverick --

CHRISTOPHER:
Maverick, green and black.

Mills: And you brought that car back to the apartment?

Christopher:
Right. I parked it next to his car between his and my, my car.

Mills: What did you do with the keys from that car?

Christopher:
I'm not certain, I don't remember if I give the keys back to Charlie, I don't even remember, if we locked the car up, I really don't. I don't believe that we did, I, I could be wrong about that, I'm not sure.

Young: What happened to that gun?

Christopher:
Pardon?

Young: What happened to the weapon that was used?

Christopher:
Ah -- If I'm not mistaken the police retrieved it from my mother's car last night.

Young: Has that been in your possession since that time?

Christopher:
Yes, sir, it has.

Young: What type gun is it?

Christopher:
RG-23-22 revolver.

Young: How many shots were fired total?

Christopher:
Two shots.

Young: And the hulls, what happened to the hulls, did you do anything about them?

Christopher:
I recall taking the empty hulls

out of the gun, and either throwing them into the lake behind the apartment or into the yard, I'm not sure if they went into the lake or not, but I remember throwing them that way. But I'm sure that they can be retrieved.

Mills: Have we covered what happened after you and Charlie got back, after you and George got back from the bank?

Young: Yeah -- why don't you go ahead and tell about the incident with Charlie after you got back from the bank. You've already mentioned that you shot him, but ah, you didn't --

CHRISTOPHER:
Okay. Ah --

Young: -- tell us about the details leading up to that.

Christopher:
Well, I knew, you know, Boots was already dead, and ah, like I said, I was still mad and ah, that's one reason why I hid the body, because as long as I knew he didn't know anything about what happened to her, he'd go ahead to the bank with me and get the money. Right? Okay. Well when we got back, I asked him again why he had put his hands on my daughter the way he had. And we got into an argument about that, and I slapped the man down in the, the, ah, was in the dining room. Ah, he tried to fight me back and I broke away from him, then he run back in the

bedroom, and tried to lock the door to me, and I opened the door on him, and he backed up and sat down on the bed, that's when I shot him.

Young: In what position did he fall?

Christopher:
Ah, he fell over on his side, on the bed, and then he fell over into the floor between the wall and the bed.

Young: Did he ever say anything?

Christopher:
He didn't say nothing.

Young: Did Bertha know that she was going to be shot, or did she say anything about her being shot?

Christopher:
No.

Mills: What prompted Bertha to say she was going to call the police?

Christopher:
Ah, like I said, her and I got into an argument about why she didn't do anything about Charlie putting his hands on Norma, you know, I mean she's raised this girl for fifteen years, uh, she tells me she loves her more than anything in the world, you know, that's her baby, you know. Ah, if she'd cared that much about her, couldn't no man come in her house and ah, put his hands on her, on her daughter that way. Not without her raising some kind of hell about it. But she just acted to me like she didn't want

to say too much to me, because she was going to mess her security up, you know. And ah, that was the, the statement that she made to me, you know, that I was messing everything up for her. You know, to be even starting this about my daughter.

Young: Did she ever agree to let Norma stay with you?

Christopher:

Yes, sir, she did. She agreed to let Norma stay with me, ah, it was my understanding that she had asked me at one time, her and Charlie both sit down and talked to me, and to Norma both, that if they went to Nap -- I mean to Miami or whereever, if they, we'd be able to maintain the apartment, you know, with my job, and ah, for her to go ahead and finish this year in school, in Naples, because that's what Norma wanted to do, she didn't want to go to Miami. And that was the main reason that ah, that Bertha was in Naples now, it was to get Norma away from Miami. She didn't want to change schools with her, so we had it worked out where we could get Charlie's trailer and fix it up and let Norma go ahead and go to school and me work.

Mills: I -- I think that about covers this thing, but ah, eventually you did tell Norma about the deaths?

Christopher:

Yes. It was approximately ten days after then.

Mills: Okav. Can you think of anything else that you want to say?

Christopher:
I don't know what, there may be something that I'm overlooking right now, you know, I don't know what.

Young: Sgt. Boswell, you got a question?

Boswell:
No. I don't believe at this time.

Young: Ah, we're going to end this interview now, ah, Bill. But we want ah, have you been promised or threatened or anything --

Christopher:
No, sir, I haven't been promised. I haven't been threatened.

Young: -- in return for your statements? What is the reason for you giving this statement?

Christopher:
The main reason I'm giving this statement is to clear my daughter of anything, because she's not guilty of nothing, and my family, ah, it's like Capt. Smith said awhile ago, ah, he's willing to let my brother and sister go. I mean, they, they have been charged with accessory after the fact, they're not guilty of it.

Young: No one -- has anyone accused your daughter of murder?

Christopher:
Her mother has. Her natural mother.

Young: I mean, I mean, I'm talking about the police?

Christopher:
No, not that I know of, off -- I, just what I heard, I heard from my aunt that Walter Kruse, which is a police officer in Memphis that I grew up with, said that the warrant was coming in, that they believed that ah, that my daughter had killed Bertha, and that I had killed Charlie, and that isn't so, because my daughter was in school.

Young: Bill, that you're giving this statement of your own free will?

Christopher:
I was giving it on my own free will.

Young: Okay. We want to end this statement right now, we end at 10:44 on September 22, 1977.

IN THE CIRUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR COLLIER COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,	)	
	)	
vs	)	CASE NO: 77-468-CF-A-31-CTC
	)	
WILLIAM CHRISTOPHER,	)	
	)	
Defendant	)	
	)	

MOTION TO SUPPRESS CONFESSION

Pursuant to Rule 3.190(i), Florida Rules of Criminal Procedure, the Defendant, WILLIAM CHRISTOPHER, by and through his undersigned attorney of record, moves the Court to suppress a statement given to officers Curtis Mills and Harold Young of the Collier County Sheriff's Office and certain members of the Memphis Police Department on September 22, 1977 at the Memphis Police Department.

As grounds for this Motion the Defendant would show the Court that said statement was not voluntarily made and

hence illegal, in that it was in response to police promises of lieniency against certain members of the Defendant's family. E.g., Jarriel v. State, 317 So.2d 141 (4th DCA Fla. 1975). The effect of these promises, either express or implied, was to delude the accused as to his true position and exert an improper and undue influence on his mind in violation of the principles set forth in Miranda v. Arizona, 384 U.S. 436 (1966), accord, Harrison v. State, 152 Fla. 86, 12 So.2d 307 (1942).

Further, the Defendant contends that the alleged waiver made at the time the statement was given was a nullity in that the Defendant never expressly stated that he did not wish to consult with a lawyer prior to the interrogation. Miranda holds that a valid waiver will not be presumed simply from the silence of the accused after warnings are given. Miranda supra

at 470, 475. An examination of the transcribed statement here shows mere silence as opposed to a direct refusal of counsel rendering the statement illegal.

WHEREFORE, the Defendant requests the Court to grant this Motion to Suppress Confession.

I HEREBY CERTIFY that a true and correct copy hereof has been furnished the Office of the State Attorney, Collier County Courthouse, Naples, Florida by delivery on this the 10th day of May, 1978.

/s/
Robert G. Hines
Assistant Public Defender

Supreme Court, U.S.
FILED
JAN 7 1988
JOSEPH F. SPANIOL, JR.
CLERK

CASE NO. 87-718

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

RICHARD L. DUGGER, Secretary,
Florida Department of Corrections,

Petitioner,

v.

WILLIAM D. CHRISTOPHER,

Respondent.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH
CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

(1) WHETHER THE PRESENT DECISION, IN HOLDING THE "CONFESSION" INADMISSABLE, CONFLICTS WITH MICHIGAN V. MOSLEY, WHERE THE INSTANT "CONFESSION" WAS PROCURED ONLY AFTER MR. CHRISTOPHER INVOKED HIS RIGHT TO REMAIN SILENT ON FOUR OCCASIONS [E.G. "I GOT NOTHING ELSE TO SAY"], AND THE POLICE CONTINUED QUESTIONING AFTER EACH INVOCATION.

(2) WHETHER A "CONFESSION" WHICH IS PRECEDED BY FOUR DISTINCT INVOCATIONS OF THE RIGHT TO REMAIN SILENT [E.G. "I GOT NOTHING ELSE TO SAY."], WHICH IS PRECEDED BY A "CHANGE" OF SUBJECTS FROM THE CRIME TO WARRANTS AND EXTRADITION FOR THE CRIME, AND WHICH IS NOT PRECEDED BY ANY CESSATION IN QUESTIONING, CAN BE VALIDATED UNDER A RE-INITIATION CONCEPT.

(3) WHETHER THE ELEVENTH CIRCUIT PERMISSIBLY RE-EXAMINED THE "CONFESSION" TRANSCRIPT IN REVIEWING THE LOWER COURTS' CONCLUSIONS REGARDING MR. CHRISTOPHER'S INVOCATION OF HIS RIGHT TO REMAIN SILENT, WHERE THE TRIAL COURT NEVER MADE A FINDING THEREON, AND THE REVIEWING COURTS EXAMINED THE IDENTICAL INTERROGATION TRANSCRIPT.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Other Authorities

INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioner's claimed basis for certiorari jurisdiction of this Court is unclear. See Sup. Ct. R. 21.5. This case does not involve an important federal question; instead, the well established Miranda area of law is applied to a "confession" transcript, and the Eleventh Circuit properly concluded that questioning must cease after a suspect states "Then I got nothing else to say." (Twice at A-152). Miranda and its progeny clearly require the cessation of questioning once a suspect indicates the desire to remain silent. This rule does not need clarification by this Court.

Apparently, the State contends (1) the instant decision conflicts with Michigan v. Mosley, 423 U.S. 96 (1975) ("Mosley"); (2) the reinitiation concept is applicable to right to silence cases, but was misapplied herein; and (3) the Eleventh Circuit did not adequately defer to the courts which had previously considered Mr. Christopher's invocation of his right to silence. No conflict with other Federal court decisions is claimed.

In brief response, (1) Mosley was not only correctly applied, but indeed Mosley mandated the Eleventh Circuit's reversal of the lower court; (2) the first three invocations of the right to silence, conspicuously ignored by the State, vitiates any reinitiation argument; further, the instant questioning simply never ceased, and thus there could not be any reinitiation. Finally, (3) the trial court never made a finding regarding the invocation of silence, any reinitiation, and any waiver of the right to silence; the reviewing courts never made an independent fact finding, but instead relied upon

the same interrogation transcript examined by the Eleventh Circuit; the Eleventh Circuit gave due deference to the factual findings below (e.g., the transcript of the subject interrogation was accepted as true), but disagreed with the lower court's application of federal constitutional law to the interrogation sequence; the invocation of silence and reinitiation issues presented a mixed question of law and fact not subject to the presumptions of correctness required by Act of June 25, 1948 ch. 646, 62 Stat. 967, 28 U.S.C. §2254 (1948); and the Eleventh Circuit concluded that the lower courts' findings were not reconcilable with the record.

This case presents no new or unique questions of law. Instead, the essence of the Eleventh Circuit's decision is clear: Once an "individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent [e.g. "I got nothing else to say." twice at A-152], the interrogation must cease." Miranda v. Arizona, 384 U.S. 436, 473-474 (1966) (emphasis supplied) ("Miranda"). Once the right to remain silent has been invoked "in any manner", Mosley requires that this right be "scrupulously honored." Mosley, 423 U.S. at 104. Instead of scrupulously honoring Mr. Christopher's numerous invocations of his right to remain silent, the interrogating officers replied with challenging and accusatory statements.

The dictates of Miranda and Mosley relative to the invocation of the right to silence have been stated by this Court on numerous occasions. No useful purpose would be served by revisiting this well-tread area of the law. This case does not involve ambiguous legal principles, nor does the State so contend. Instead, this is a case in which the interrogating

officers simply ignored the Defendant's right to remain silent by continuing to question Mr. Christopher after he stated "I got nothing else to say." (Twice at A-152).

STATEMENT OF THE CASE

Unfortunately, Petitioner's statement of the case is very deficient. The dialogue in which Mr. Christopher invokes his right to remain silent on numerous occasions, and which forms the very heart of the Eleventh Circuit's opinion, is omitted. In addition, the Petitioner claims the trial court made certain findings regarding the invocation of the right to silence; the Petitioner has not and cannot provide citations for these "findings", as they do not exist. See Footnote 2, infra at 6. As the Eleventh Circuit noted:

> The State's account of the interrogation in its brief varies substantially from the record. The State claims that after Officer Mills' initial "clarifying" statements "Christopher continue[d] of his own volition to speak." Appellee's Brief at 15 (emphasis supplied). While the State concedes that there were other attempts to terminate the interrogation, the State does not mention that Christopher responded to this purported clarification with a second request to cut off questioning.

Christopher v. State, 824 F.2d 836, 841, n. 15 (11th Cir. 1987).

The importance of the relevant interrogation sequence requires its full inclusion.

> YOUNG: [Collier County Police Detective] That's the real corker, I can't understand why you killed this elderly lady, I mean I can understand you might be -
>
> CHRISTOPHER: Well, save-
>
> YOUNG: Now wait a minute, yea, I accused you for we signed a warrant against you.
>
> CHRISTOPHER: Okay.
>
> YOUNG: Ah-

CHRISTOPHER: Then I got nothing else to say. If you're accusing me of murder, then, take me down there.

YOUNG: [Challenging response][1] You were accused when you came in here. You knew you were accused--

CHRISTOPHER: That's right. That's right.

MILLS: [Collier County Police Detective] [Challenging response; mention of Christopher's daughter's involvement] You knew what you were accused of, and I told you what the girl was accused of, so don't make out like you don't know what you're accused of.

CHRISTOPHER: Oh, ah, -- I know what I'm accused of. I know that I'm accused of both murders.

MILLS: I told you awhile ago you were being charged with both murders.

CHRISTOPHER: Okay, then, I got nothing else to say.

YOUNG: [Challenging response] You mean its all right, as long as we accuse you of one?

MILLS: [Double teaming with Young] But, all of a sudden when you're accused of two, you don't-

CHRISTOPHER: I'm not saying that, I know that, didn't I tell you awhile ago that I knew that ya, I was accused of both murders?

YOUNG: Yeah. You--you should know.

CHRISTOPHER: Okay, then. What's the need of me saying anything then.

MILLS: [Challenging reply] What are you upset about?

CHRISTOPHER: You ask me? I'm upset about the fact that you're bringing my daughter up here like I'm using her in this thing.

YOUNG: I'm asking you-

MILLS: [Double teaming; involvement of daughter] I'm asking you to explain her actions in this thing?

CHRISTOPHER; Her actions. Her actions in what? I don't see where she's done anything.

A-151-153 (emphasis supplied).

---

[1] To facilitate the application of this interrogation to the Argument section of this Brief in Opposition, and to abbreviate the Argument section, Respondent has taken the liberty to characterize and notate this passage; Respondent does not imply that the actual transcript contained the bracketed statements.

Thus, in the space of thirty lines Mr. Christopher invoked his right to remain silent three times: "Then I got nothing else to say." "Okay, then, I got nothing else to say." "What's the need of me saying anything then."

The claimed failure to accord due deference to lower courts findings shares an equally faulty factual basis, as well as a defective procedural basis. Axiomatically, if no facts have been found, no deference is due. The trial court herein never made a finding that Mr. Christopher failed to invoke his right to remain silent, or that Mr. Christopher reinitiated the interrogation.[2/] Thus, the "facts" found below relative to

---

[2/] The trial court concluded that Mr. Christopher waived his right to counsel, and that the confession was voluntary. A-94. The trial court, in its "findings", never examined the right to silence issue in any manner; the reinitiation concept was not addressed either. A-93 to A-96. The trial court does state that "Miranda has been complied with " (Id. at 96); however, the Miranda issue under consideration was the waiver of right to counsel, and the voluntariness of the confession. Id. at 94, 179-181 (Motion to Suppress Confession).

The State, in its Petition at 26, twice claims the trial court concluded Mr. Christopher never invoked his right to remain silent. However, the State does not provide a citation for this statement and, it is respectfully submitted, cannot provide such a citation. The State also argues that the Florida trial court accepted the Police Officers "explanation" of what occurred during the interrogation (Pet. at 26); again, however, the State does not cite to any statement by the trial court supporting the conclusion that the trial court even considered, let alone accepted, the Police Officers' testimony regarding the right to silence invocation. The State then claims the court reporter could not accurately transcribe the interrogation, and thus the instant transcript is inaccurate. Id. at 27-28. In this light, one must wonder whether the State is attempting to support or undermine the facts found below and whether the State is attempting to clarify or cloud the issues.

the right to silence are contained solely in the transcript as quoted above. The Florida Supreme Court and the Southern District of Florida had the same interrogation transcript before them as did the Eleventh Circuit. The Eleventh Circuit gave all deference that was due: it accepted the transcript. The Constitutional effect of these facts is open to free review; no deference is due to the State court's or Federal District Court's legal analysis based on these facts.

Procedurally, the State never argued that the lower courts' "findings" were binding upon the Eleventh Circuit until it moved for rehearing before the Eleventh Circuit. The District Court order does not reference any factual presumption. This issue arose for the first time, then, after the adverse Eleventh Circuit decision.[1/]

Respondent also takes strong exception to the Petitioner's statements that it was Mr. Christopher who killed the victims herein.

1/ In addition, the subject fact finding process was inherently defective. Act of November 2, 1966, Pub. L. No. 89-711, §2, 80 Stat. 1105, 28 U.S.C. § 2254(d)(2) (1966). Mr. Christopher never testified at the confession suppression hearing. The deficiency in this hearing is the basis for Appeal Number 85-5220, consolidated below. Essentially, the Collier County Judge would not rule on the admissibility at trial of testimony given by Mr. Christopher at the suppression hearing. Thus, Mr. Christopher could attempt to defeat the admissibility of his confession; or he could invoke his Fifth Amendment right to silence, and not testify at the suppression hearing. He could not do both. The requirement that Mr. Christopher forego one constitutional right to exercise another is impermissible. Simmons v. United States, 390 U.S. 377 (1968).

WHETHER THE PRESENT DECISION, IN HOLDING THE "CONFESSION" INADMISSIBLE, CONFLICTS WITH MICHIGAN V. MOSLEY, WHERE THE INSTANT "CONFESSION" WAS PROCURED ONLY AFTER MR. CHRISTOPHER INVOKED HIS RIGHT TO REMAIN SILENT ON FOUR OCCASIONS [E.G. "I GOT NOTHING ELSE TO SAY"], AND THE POLICE CONTINUED QUESTIONING AFTER EACH INVOCATION

The State claims a lack of clarity in Mr. Christopher's invocation of his right to silence. This contention is unfathomable: stating "I got nothing else to say" is clearly an invocation of the right to silence. As the Eleventh Circuit noted, "[t]his comment, considered in the totality of the circumstances, cannot be viewed as anything other than an unequivocal invocation of his right to remain silent." Christopher, 824 F.2d at 842.

Once Mr. Christopher twice stated "I got nothing else to say", Mosley and Miranda required the interrogation cease. The State counters that after Mr. Christopher's fourth invocation of his right to silence, the officers complied with Mosley, by "changing" the subject to the arrest warrant and extradition for the charged crimes. Pet. at 21. Mr. Christopher's first three invocations of his right to remain silent, virtually ignored in the Petitioner's Statement of the Case, is likewise omitted from the State's argument. Only if the State manipulates the plain transcript in this cause, and omits the first three invocations, can the State's argument have any validity.

The State's analysis permits the police to simply ignore the first three invocations of the right to remain silent, continue the questioning, and when the detainee finally becomes "more cooperative", the State can utilize the detainee's statements. Under the State's scheme, even the clearest of statements that the defendant wishes to terminate questioning

could simply be ignored. The Respondent fervently implores this Court to reject this contention. Such a pattern of questioning would eviscerate Miranda.

Indeed, the Mosley court expressly rejected the precise interpretation of Miranda proposed by the State: i.e. that a "momentary cessation" of questioning, or a "changing of the subject", is sufficient to fulfill the responsibility to cut off questioning.

> Or [Miranda] could be interpreted to require only the immediate cessation of questioning, and to permit a resumption of interrogation after a momentary respite.
>
> It is evident that any of these possible literal interpretations [of Miranda] would lead to absurd and unintended results. To permit the continuation of custodial interrogation after a momentary cessation would clearly frustrate the purposes of Miranda by allowing repeated rounds of questioning to undermine the will of the person being questioned.

Mosley, 423 U.S. at 102.

The State is in an untenable position. It acknowledges, as it must pursuant to Miranda and Mosley, that questioning must cease after an invocation of the right to remain silent. Unfortunately for the State, this clear legal requirement was ignored after Mr. Christopher's first three invocations. In an effort to prevail herein, the State elects to don blinders as to these initial invocations. This approach was correctly and strongly dismissed below. Once the Eleventh Circuit perceived that "the State's account of the interrogation . . . varies substantially from the record" (Christopher, 824 F.2d at 841, n. 15) and noted that the initial statements by Christopher "cannot be viewed as anything other than an unequivocal invocation of his right to remain silent" (id. at 842), the fallacy of the State's position became clear.

The Eleventh Circuit's decision is not only supported by Mosley, but it is mandated by Mosley. After the very first invocation of the right to silence, the interrogation had to cease. Instead, the interrogators continued through three additional invocations without stopping. The State's attempts to circumvent Miranda and Mosley must not be sanctioned by this Court.

WHETHER A "CONFESSION" WHICH IS PRECEDED BY FOUR DISTINCT INVOCATIONS OF THE RIGHT TO REMAIN SILENT [E.G. "I GOT NOTHING ELSE TO SAY."], WHICH IS PRECEDED BY A "CHANGE" OF SUBJECTS FROM THE CRIME TO WARRANTS AND EXTRADITION FOR THE CRIME, AND WHICH IS NOT PRECEDED BY ANY CESSATION IN QUESTIONING, CAN BE VALIDATED UNDER A RE-INITIATION CONCEPT

The State claims that after Mr. Christopher invoked his right to remain silent, the police officers "changed" the subject matter of the interrogation from the crimes to the warrants and extradition for the crime. After that point, contends the State, Mr. Christopher re-initiated the conversation between he and the officers, and subsequently confessed. Borrowing from Edwards v. Arizona, 451 U.S. 477 (1981) ("Edwards"), the State concludes the "confession" is valid, even though the State violated Mr. Christopher's right to remain silent. Pet. at 38.

Crucial to the State's conclusion is the faulty premise that "of course" "a police officer [can] continue to converse, permissibly, with a suspect, who, during an interrogation, invokes his right to remain silent." Pet. at 21. The State does not provide a citation for its unique interpretation of the right to silence. Respondent respectfully submits that what is so patent to the State (e.g., police officers can continue to converse with defendants after they have invoked their right to remain silent) is indeed difficult to reconcile with the unambiguous Miranda holding: once an individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. Miranda, 384 U.S. at 473-474. This fundamental misapprehension of the law illustrates the speciousness of the State's analysis in this cause.

The reinitiation concept is not available to the State in this action: the interrogating officers did not stop the questioning or change the subject after Mr. Christopher said, "Then I got nothing else to say."; the interrogating officers did not stop the questioning or change the subject following the second time Mr. Christopher stated, "I got nothing else to say."; and the interrogating officers did not stop the questioning or change the subject following Mr. Christopher's statement, "Okay, then. What's the need of me saying anything then." Instead, the officers responded by challenging Mr. Christopher regarding his knowledge of the charges, double-teaming Mr. Christopher, and referencing the involvement of Mr. Christopher's daughter in the murder scenario. See A-152-153, quoted above.

As with the first issue, in an attempt to prevail herein, the State is forced to don blinders to the first three invocations of the right to remain silent by Mr. Christopher. Only if the officers had attempted to "change" the subject matter of the interrogation after each of the first three invocations of the right to silence would the State's "reinitiation" concept be relevant.

Finally, as adeptly recognized by the Eleventh Circuit, "the first prong of the initiation test requires that any previous police-initiated interrogation have ended prior to the suspect's alleged initiatory remark; for, just as one cannot start an engine that is already running, a suspect cannot 'initiate' an on-going interrogation." Christopher; 824 F.2d at 845 (emphasis original). Mr. Christopher challenges the State to identify any cessation of questioning. After the first invocation of the right to remain silent, the questioning

continued; after the second invocation of the right to remain silent, the questioning continued; after the third invocation of the right to remain silent, the questioning continued; after the fourth invocation of the right to remain silent, the questioning continued.

Only if the first three invocations of the right to silence are ignored, and only if the lack of any cessation in questioning is ignored, can one successfully assert the reinitiation issue. Because of the prior invocations, and the failure of the interrogators to cease questioning, the reinitiation issue forwarded by the State is without merit.

WHETHER THE ELEVENTH CIRCUIT PERMISSIBLY RE-EXAMINED THE "CONFESSION" TRANSCRIPT IN REVIEWING THE LOWER COURTS' CONCLUSIONS REGARDING MR. CHRISTOPHER'S INVOCATION OF HIS RIGHT TO REMAIN SILENT, WHERE THE TRIAL COURT NEVER MADE ANY FINDINGS THEREON, AND THE REVIEWING COURTS EXAMINED THE IDENTICAL INTERROGATION TRANSCRIPT

The State also contends that the courts which have previously considered whether Respondent invoked his right to remain silent concluded that he did not; therefore, continues the argument, Act of November 2, 1966, Pub. L. No. 89-711, §2, 80 Stat. 1105, 28 U.S.C. §2254(d) (1966) prohibits the Eleventh Circuit from concluding to the contrary. This argument is not supported by the record herein, and is legally inaccurate.

The admissibility of confessions has been addressed by the Court on innumerable occasions. This Court has not hesitated to re-examine the record to determine the accuracy of previous courts' conclusions. Brewer v. Williams, 430 U.S. 387 (1977) ("Whether [Defendant] waived his constitutional rights was not, of course, a question of fact, but an issue of federal law." Id. at 397, n.4; "[T]he question of waiver was not a question of historical fact, but one which in the words of Mr. Justice Frankfurter, requires 'application of constitutional principles to the facts as found . . . ." Id. at 403 (citing Brown v. Allen, 344 U.S. 443 (1953).)[4/] This principle has specifically been applied to waivers of the right to silence. Lamb v. Zahradnick, 452 F.Supp. 372, 375-76 (E.D. Va. 1978).

4/ See also United States v. Curcio, 694 F.2d 14, 21-22 (2d Cir. 1982) (Waiver of "right to separate and conflict - free representation"); Cahill v. Rushen, 678 F.2d 791, 795 (9th Cir. 1982) (Waiver of right to counsel); Martineau v. Perrin, 601 F.2d 1196, 1198 (1st Cir. 1979) (Waiver of right to a public trial).

The reviewability of a confession's admissibility was recently revisited in Miller v. Fenton, 474 U.S. 104, (1985). In Miller, the issue was whether voluntariness is an issue of fact entitled to the Section 2254(d) presumption. The applicability of Section 2254(d) to an inferior court's conclusion relative to the invocation of the right to silence was not explicitly decided. Nonetheless, the Miller court reaffirmed that "the ultimate question whether, under the totality of the circumstances, the challenged confession was obtained in a manner compatible with the requirements of the Constitution is a matter for independent Federal determination." 474 U.S. at 112. The Court concluded that "[f]or several reasons we think that it would be inappropriate to abandon the Court's long standing position that the ultimate question of the admissibility of a confession merits treatment as a legal inquiry requiring plenary federal review." Id. at 115. Further, while subsidiary factual questions relative to the admissibility of confessions are entitled to the 28 U.S.C. §2254(d) presumption, "once such underlying factual issues have been resolved, and the moment comes for determining whether, under the totality of the circumstances, the confession was obtained in a manner consistent with the Constitution, the state-court judge is not in an appreciably better position than the federal habeas court to make that determination." Id. at 117.

The propriety of independent Federal review is particularly appropriate herein. The State mischaracterizes the previous "factual" determinations. The trial court never addressed the right to silence issue; the trial court never decided whether Mr. Christopher invoked his right to remain silent, and if so,

whether the officers scrupulously honored that invocation, and if so, whether Mr. Christopher re-initiated the interrogation. A-93 to A-96 (trial court concludes no violation of right to counsel, and that confession was voluntary and not improperly procured). The Florida Supreme Court and Judge King at the Southern District reviewed the exact same transcript of the interrogation as was considered by the Eleventh Circuit. No independent fact finding occurred during post-trial proceedings.

Due deference therefore was applied to the fact-finding process of the lower courts. The Eleventh Circuit accepted the interrogation transcript, and conducted an independent legal analysis of whether the facts disclosed in the interrogation transcript rendered the "confession" inadmissible. This is entirely appropriate, as "the state-court judge is not in an appreciably better position than the federal habeas court to make that determination [that the confession was obtained in a manner consistent with the Constitution]." Miller, 474 U.S. at 117.

The Petitioner's position is basically that it won at all the other levels of judicial review, and therefore the Eleventh Circuit is now bound to agree with the Petitioner as well. If the province of the various federal court of appeals were so limited, their review would be meaningless. Instead, literally hundreds of criminal convictions have been overturned for the first time by a federal appellate court, notwithstanding numerous state and federal district court reviews. The State dislikes this reality; nonetheless, the ability of Ernesto A. Miranda to have his case reviewed, and reversed for the first time at the United States Supreme Court, after extensive prior review, is at the heart of the protections afforded by the Federal Constitution.

CONCLUSION

The certiorari jurisdiction of this Court should not be devoted to an area of law which has been addressed at length by this Court, and which is well understood by lower courts and police agencies. Even at the time of Miranda, the holding that interrogation must cease when an individual indicates in any manner that he does not wish to be interrogated was a "holding [which was] not an innovation in our jurisprudence but [was] an application of principles long recognized in other settings." Miranda, 384 U.S. at 442. The Miranda court labored to be as clear as possible, and, it is respectfully submitted, the Miranda court succeeded. The following holding needs no clarification:

> Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise.

Id. at 473-74 (emphasis supplied).

The Supreme Court subsequently addressed the issue of when an interrogation can recommence following a valid invocation of the right to remain silent in Mosley. The court rejected the contention that once the right to remain silent has been invoked, the police can never again question the detainee. Mosley, 423 U.S. at 102. The court likewise rejected the concept that Miranda "could be interpreted to require only the immediate cessation of questioning, and to permit a resumption of interrogation after a monetary respite." Id. The crucial inquiry, concluded the Mosley court, "depends under Miranda on whether his 'right to cut off questioning' was 'scrupulously honored'." Id. at 105.

Thus, the interrogation procedure used herein was specifically addressed in Mosley, and expressly rejected therein. The teachings of Mosley, and the application of the tests therein, have been followed without confusion by the various Federal appellate courts. See, e.g., United States v. Hernandez, 574 F.2d 1362 (5th Cir. 1978); United States v. Olof, 527 F.2d 752 (9th Cir. 1975).

Miranda and Mosley have set the standards for interrogators' conduct following an invocation of the right to remain silent. Another opinion in this well-established area of the law will not be of assistance to the police agencies, to the lower courts, or to the dictates of this Court's crowded docket. The bottom line herein is that the police officers' simply ignored three invocations of the right to silence; the interrogation was plainly improper. The State now seeks to invoke this Court's jurisdiction to cure the deficiencies of the interrogating officers herein, and to sanitize a patently objectionable interrogation. This Court's jurisdiction is too valuable to be devoted to such a goal.

This Court should deny the Petition for Writ of Cetiorari. If the Court issues the Writ, then Respondent respectfully requests an opportunity to fully brief the appropriate issues.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, TERRENCE JOSEPH RUSSELL, ESQ., Counsel for Respondent, and a member of the Bar of the United States Supreme Court, hereby certify that on the 6th day of January, 1988, I served one copy of the Brief in Opposition to Petition for Writ of Certiorari on KATHERINE V. BLANCO, ESQ., Assistant Attorney General, 1313 Tampa Street, Suite 804, Park Trammell Building, Tampa, Florida 33062, and DONALD E. PELLECCHIA, ESQ., Assistant State Attorney, Twentieth Judicial Circuit, Lee County Criminal Justice Center, P.O. Drawer 399, Fort Myers, Florida 33902, by a duly addressed envelope, first class postage prepaid.

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